S. HRG. 100-764

MISCELLANEOUS LAND CONVEYANCES AND PRIVATE RELIEF LEGISLATION

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1461

TO CONVEY CERTAIN LANDS TO THE YMCA OF LAS VEGAS, NEVADA

S. 1687

TO CORRECT HISTORICAL AND GEOGRAPHICAL OVERSIGHTS IN THE ESTABLISHMENT AND DEVELOPMENT OF THE UTAH COMPONENT OF THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION, TO UNIFY THE LAND BASE OF THE GOSHUTE RESERVATION, TO SIMPLIFY THE BOUNDARIES OF THE GOSHUTE RESERVATION, AND FOR OTHER PURPOSES

S. 1849

FOR THE RELIEF OF MR. CONWELL F. ROBINSON AND MR. GERALD R. ROBINSON

S. 2264

TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO EXCHANGE CERTAIN FEDERAL MINING RIGHTS FOR CERTAIN LANDS IN NEW MEXICO

MAY 20, 1988

Printed for the use of the
Committee on Energy and Natural Resources

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S311-1

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MISCELLANEOUS LAND CONVEYANCES AND PRIVATE RELIEF LEGISLATION

FRIDAY, MAY 20, 1988

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room SD–366, Dirksen Senate Office Building, Hon. John Melcher, presiding.

OPENING STATEMENT OF HON. JOHN MELCHER, U.S. SENATOR FROM MONTANA

Senator MELCHER. The subcommittee will come to order.

The purpose of the hearing today is to receive testimony on four measures before the Public Lands, National Parks and Forests Subcommittee. The measures are:

S. 1461, a bill to convey certain lands to the YMCA of Las Vegas, Nevada;

S. 1687, a bill to correct historical and geographical oversights in the establishment and development of the Utah component of the Confederated Tribes of the Goshute Reservation, to unify the land base of the Goshute Reservation, to simplify the boundaries of the Goshute Reservation, and for other purposes;

S.s 1849, for the relief of Mr. Conwell F. Robinson and Mr. Gerald R. Robinson; and

S. 2264, a bill to authorize the Secretary of the Interior to exchange certain Federal mining rights for certain lands in New Mexico.

At this point I will put copies of all of the proposals in the hearing record.

[The texts of S. 1461, S. 1687, S. 1849 and S. 2264 follow:]

II

100TH CONGRESS
1ST SESSION

S. 1461

To convey certain lands to the YMCA of Las Vegas, Nevada.

IN THE SENATE OF THE UNITED STATES

JULY 1 (legislative day, JUNE 23), 1987

Mr. HECHT introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To convey certain lands to the YMCA of Las Vegas, Nevada.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONVEYANCE.—Notwithstanding any other provision of law, the Secretary of the Interior shall convey, without consideration, to the Young Men's Christian Association (YMCA) of Las Vegas, Nevada, the forty acres of land described as follows:

Township 21 south, range 62 east, sec. 34, Mount Diablo base line and Meridian, Nevada,

west ½ northeast ¼ northwest ¼ northwest ¼, comprising five acres,

northwest ¼ northwest ¼ northwest ¼, comprising ten acres,

north ½ northeast ¼ northwest ¼, comprising twenty acres, and

east ½ northeast ¼ northwest¼ northwest ¼, comprising five acres.

○

II

100TH CONGRESS
1ST SESSION

S. 1687

To correct historical and geographical oversights in the establishment and development of the Utah component of the Confederated Tribes of the Goshute Reservation, to unify the land base of the Goshute Reservation, to simplify the boundaries of the Goshute Reservation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 1987

Mr. GARN (for himself and Mr. HATCH) (by request) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To correct historical and geographical oversights in the establishment and development of the Utah component of the Confederated Tribes of the Goshute Reservation, to unify the land base of the Goshute Reservation, to simplify the boundaries of the Goshute Reservation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LANDS HELD IN TRUST FOR THE TRIBE PURSUANT TO EXECUTIVE ORDERS.

(a) LANDS HELD IN TRUST.—In recognition and confirmation of the actions of the President in Executive Order

1539 (May 29, 1912; IR 168) and Executive Order 1903 (March 23, 1914; IV K 1048), the lands in Utah described in such orders are hereby declared to be held in trust by the United States for the use and benefit of the Tribe.

(b) EFFECTIVE DATE FOR DETERMINING WATER RIGHTS AND PRIORITIES.—For purposes of determining water rights, and priorities related to such rights, in the lands held in trust for the Tribe under subsection (a), such lands shall be deemed to have been held in trust by the United States as of the dates of the respective executive orders referred to in subsection (a) or such earlier dates as may be indicated by any applicable order or law.

SEC. 2. IMPLEMENTATION; PROTECTION OF THE RIGHTS OF THIRD PARTIES; RIGHTS OF ACCESS.

(a) VALID EXISTING RIGHTS.—Except as otherwise provided in this section, nothing in this Act shall be construed to deprive any person of any valid existing right or interest (including, but not limited to, a real property right or interest, water right or priority, right of ingress and egress, right of way, easement, license, grazing permit oil and gas lease, mining claim, or other legal property or contract right or interest) which such person may have in the lands described in this Act on the date of enactment of this Act.

(b) TRANSFER OF RIGHTS TO TRIBE.—Upon the effective date of this Act, all valid rights of way, leases, permits,

and other land use rights or authorizations, except mining claims, existing on the date of enactment of this Act in the lands described in this Act, including the right to receive compensation for use of the lands, shall cease to be the responsibility of, or inure to the benefit of, the United States, and shall become the responsibility of the Tribe. The Tribe shall succeed to the interests of the United States and shall continue to maintain those interests under the same terms and conditions as they were maintained by the United States.

(c) DETERMINATION OF VALIDITY OF UNPATENTED MINING CLAIMS.—(1) Not later than two years after the date of enactment of this Act, the Secretary shall determine the validity of all mining claims existing on the date of enactment of this Act on the lands within the exterior boundaries of the Reservation. Those mining claims which the Secretary determines to be valid shall be maintained thereafter in compliance with the mining laws of the United States, but the holders of such claims shall not be entitled to a patent.

(2) Any such valid mining claim—

(A) shall carry all the rights incident to mining claims, including the right of ingress and egress over the land referred to in sections 3(a) and 3(f);

(B) shall carry the right to occupy and use so much of the surface of such land within its boundaries

as is required for all purposes reasonably necessary to mine and remove the minerals; and

(C) shall terminate when it is determined by the Secretary to be invalid or is abandoned.

SEC. 3. ADDITION OF LANDS TO THE RESERVATION.

(a) LANDS UNINTENTIONALLY OMITTED FROM INCLUSION BY EXECUTIVE ORDER OF 1914.—All right, title, and interest of the United States in and to the lands described in section 10(a) is hereby declared to be held by the United States in trust for the use and benefit of the Tribe and to be part of the Reservation.

(b) FEDERAL BUT NON-INDIAN LANDS WITHIN THE BOUNDARIES OF THE 1912 AND 1914 EXECUTIVE ORDER RESERVATIONS.—All right, title, and interest of the United States in and to the lands described in section 10(b) is hereby declared to be held by the United States in trust for the use and benefit of the Tribe and to be part of the Reservation.

(c) LANDS HELD IN TRUST BUT NOT PART OF THE RESERVATION.—All lands described in section 10(c), title to which is held by the United States in trust for the Tribe are hereby declared to be part of the Reservation.

(d) UNIFICATION OF SUBSURFACE ESTATES.—All right, title, and interest of the United States in and to the subsurface estates described in section 10(d) is hereby de-

clared to be held by the United States in trust for the use and benefit of the Tribe and to be part of the Reservation.

(e) LANDS HELD BY THE TRIBE AS A PRIVATE PARTY.—The Secretary may accept a conveyance by the Tribe of all right, title, and interest of the Tribe in and to the lands described in section 10(e). Any such land accepted by the Secretary shall be held by the United States in trust for the use and benefit of the Tribe and shall become part of the Reservation.

(f) FEDERAL LANDS SURROUNDING GOSHUTE TRIBAL CEMETERY.—All right, title, and interest of the United States in and to the lands described in section 10(f) is hereby declared to be held by the United States in trust for the use and benefit of the Tribe and to be part of the Reservation.

(g) MAPS AND LEGAL DESCRIPTIONS.—Within 90 days after the date of enactment of this Act, the Secretary shall publish a legal description in the Federal Register of the lands added by this Act to the Reservation. During such period, the Secretary is authorized to correct any technical errors in the legal descriptions contained in this Act. A map depicting the lands added to the Reservation by this Act shall be on file and available for public inspection in the Office of the Secretary, Department of the Interior.

SEC. 4. CONTINGENT ADDITION OF LANDS AND INTERESTS HELD BY THE STATE OF UTAH; CONTINGENT UNIFICATION OF SPLIT ESTATES.

(a) LANDS HELD BY THE STATE OF UTAH.—If any right, title, and interest in and to any or all portions of the tracts of land described in section 10(g)(1) ever vests in the United States, the United States shall hold all of its right, title, and interest in and to such tracts in trust for the use and benefit of the Tribe and such tracts shall become part of the Reservation.

(b) UNIFICATION OF SPLIT ESTATES.—If any right, title, and interest in and to any subsurface estate in any or all portions of the tracts of land described in section 10(g)(2) shall ever vest in the United States, the United States shall hold all of its right, title, and interest in and to the minerals in such tracts in trust for the use and benefit of the Tribe and such interests shall become part of the Reservation.

SEC. 5. AUTHORIZATION FOR THE PURCHASE OF LANDS WITHIN, ADJACENT TO, OR IN CLOSE PROXIMITY TO THE RESERVATION.

(a) AUTHORITY.—The Secretary is authorized to acquire by donation, exchange, purchase any lands or interests in lands within, adjacent to, or in close proximity to the boundaries of the Reservation for the use and benefit of the Tribe.

(b) LIMITATION ON EXCHANGES.—Land may be exchanged under subsection (a) only if that land is within the State of Utah and is equal in value to the land being exchanged; except, that the Secretary may accept cash from, or pay cash to, the grantors in such exchanges in order to equalize the values of the properties exchanged.

(c) FUNDS FOR PURCHASE.—The Secretary is authorized to purchase, with funds made available by the Tribe for this purpose, any lands or interests in lands within, adjacent to, or in close proximity to the Reservation.

(d) ADVICE AND CONSENT OF GOSHUTE TRIBAL BUSINESS COUNCIL.—Before entering into any transaction under this section, the Secretary shall obtain the advice and consent of the Goshute Tribal Business Council. The terms and conditions of any such transaction shall be mutually agreed upon by the Secretary, the Goshute Tribal Business Council, and the States or individuals concerned (as the case may be).

(e) ADDITION TO RESERVATION.—Title to any land or interests in land acquired under this section shall be taken in the name of the United States in trust for the use and benefit of the Tribe and shall become part of the Reservation.

SEC. 6. RESTRICTION ON DISPOSAL OF CERTAIN FEDERAL LANDS ADJACENT TO THE GOSHUTE INDIAN RESERVATION.

Any right, title, or interest of the United States in and to the lands described in section 10(h) may not be conveyed, sold, or otherwise transferred by the Bureau of Land Management, or any other Federal agency, without the approval of the Secretary, after consideration of the desire and need of the Tribe for such lands.

SEC. 7. EXTINGUISHMENT OF RIGHT OF UNITED STATES TO CONSTRUCT DITCHES AND CANALS.

The reserved right of the United States to construct ditches and canals on the lands described in this Act, and any lands acquired pursuant to section 5, is hereby extinguished.

SEC. 8. APPLICATION OF UNITED STATES LAWS TO LANDS ADDED TO RESERVATION.

The lands which are declared to be held in trust for the Tribe and added to the Reservation under this Act shall be subject to the laws of the United States relating to Indian land to the same extent and in the same manner as the lands comprising the Reservation of the Tribe on the day of the enactment of this Act.

SEC. 9. DEFINITIONS.

For the purposes of this Act—

(1) the term "Reservation" means the reservation of the Tribe;

(2) the term "Secretary" means the Secretary of the Interior; and

(3) the term "Tribe" means the Confederated Tribes of the Goshute Reservation.

SEC. 10. LAND DESCRIPTIONS.

(a) LANDS UNINTENTIONALLY OMITTED FROM INCLUSION BY EXECUTIVE ORDER OF 1914.—The lands referred to in section 3(a), comprising approximately 1753.51 acres of public domain lands, are described as follows:

Fractional Township 11 South, Range 20 West, Salt Lake Base and Meridian, Juab County, Utah

Section 1: All.

Section 12: Lots 1–4, the northeast ¼, and the northeast ¼ of the southeast ¼.

Section 13: Lots 1–4, the west ½ of the southeast ¼, and the southeast ¼ of the southeast ¼.

Section 24: All.

Section 25: All.

Fractional Township 12 South, Range 20 West, Salt Lake Base and Meridian, Juab County, Utah

Section 1: All.

Section 12: Lots 1 and 2.

(b) FEDERAL BUT NON-INDIAN LANDS WITHIN THE BOUNDARIES OF THE 1912 AND 1914 EXECUTIVE ORDER

RESERVATIONS.—The lands referred to in section 3(b), comprising approximately 80 acres, are described as follows:

1926 ALLOTMENT RECONVEYANCE

Township 11 South, Range 19 West; Salt Lake Base and Meridian, Juab County, Utah

Section 8: The southeast ¼ of the southeast ¼.

Section 9: The southeast ¼ of the southeast ¼.

(c) LANDS HELD IN TRUST BUT NOT PART OF THE RESERVATION.—The lands referred to in section 3(c), comprising approximately 5,075.69 acres, are described as follows:

(1) HEADQUARTERS UNIT

Township 9 South, Range 19 West, Salt Lake Base and Meridian, Tooele County, Utah

Section 33: The southeast ¼ of the northeast ¼, the southeast ¼, the southeast ¼ of the southwest ¼.

Section 34: The southwest ¼ of the northwest ¼, the west ½ of the southwest ¼, the northeast ¼ of the southwest ¼, the southeast ¼ of the northwest ¼.

Township 10 South, Range 19 West, Salt Lake Base and Meridian, Tooele County, Utah

Section 3: Lot 4 and the southwest ¼ of the northwest ¼.

Section 4: Lot 1 and Lot 2, the south ½ of the northeast ¼, the southeast ¼.

(2) HALSTEAD PURCHASE

Township 9 South, Range 19 West, Salt Lake Base and Meridian, Tooele County, Utah

Section 22: The southeast ¼ of the southwest ¼.

Section 27: The east ½ of the west ½.

Section 34: The north ½ of the northwest ¼.

Township 10 South, Range 19 West, Salt Lake Base and Meridian, Tooele County, Utah

Section 9: The northeast ¼ of the northwest ¼, the south ½ of the northwest ¼, the north ½ of the southwest ¼, the north ½ of the northeast ¼.

(3) VARIOUS PURCHASED INHOLDINGS IN 11 SOUTH, 19 WEST

Township 11 South, Range 19 West, Salt Lake Base and Meridian, Juab County, Utah

Section 19: The northeast ¼ of the southwest ¼.

Section 20: The east ½ of the west ½.

Section 22: The north ½ of the southeast ¼, the northeast ¼, the west ½, the south ½ of the southeast ¼.

(4) PURCHASED AND EXCHANGED LAND IN 12 SOUTH, 19 WEST

Township 12 South, Range 19 West, Salt Lake Base and Meridian, Juab County, Utah

Section 27: The southwest ¼ of the northwest ¼, the northwest ¼ of the southwest ¼.

Section 28: The east ½ of the northeast ¼, the east ½ of the northwest ¼, the northwest ¼ of the northwest ¼, the southeast ¼ of the southwest ¼.

Section 29: The southeast ¼, the southwest ¼ of the northeast ¼, the north ½ of the northeast ¼.

Section 30: The south ½ of the northeast ¼.

Section 33: The northeast ¼ of the northwest ¼, the northwest ¼ of the northeast ¼.

Section 34: The southeast ¼, the southeast ¼ of the northeast ¼, the north ½ of the northeast ¼, the northeast ¼ of the northwest ¼.

Section 27: The northwest ¼ of the northwest ¼, the southeast ¼ of the northwest ¼, the east ½ of the southwest ¼, the southwest ¼ of the southwest ¼.

Section 28: The west ½ of the northeast ¼, the southwest ¼ of the northwest ¼, the northeast ¼ of the southwest ¼, the southwest ¼ of the southeast ¼, the east ½ of the southeast ¼.

Section 29: The southeast ¼ of the northeast ¼.

Section 33: The northeast ¼ of the northeast ¼.

Section 34: The northwest ¼ of the northwest ¼.

Section 35: The northwest ¼ of the southwest ¼.

Section 28: The west ½ of the southwest ¼, the northwest ¼ of the southeast ¼.

Section 30: The north ½ of the northeast ¼, the northeast ¼ of the northwest ¼ and Lot 1.

Section 33: The south ½ of the northeast ¼.

Section 34: The southwest ¼ of the northeast ¼, the south ½ of the northwest ¼, the southeast ¼.

(5) PURCHASED AND EXCHANGE LAND IN 12 SOUTH, 20 WEST

FRACTIONAL TOWNSHIP 12 SOUTH, RANGE 20 WEST, SALT LAKE BASE AND MERIDIAN, JUAB COUNTY, UTAH

Section 12: Lots 3 and 4.

Section 13: Lots 1, 2, 3 and 4.

Section 24: Lots 1, 2, 3 and 4.

(d) UNIFICATION OF SUBSURFACE ESTATES.—The lands referred to in section 3(d) are described as follows:

Township 9 South, Range 19 West, Salt Lake Base and Meridian, Tooele County, Utah

Section 22: The southeast ¼ of the southwest ¼. (oil and gas)

Section 34: The southeast ¼ of the northwest ¼, and the northeast ¼ of the southwest ¼. (all minerals)

Township 10 South, Range 19 West, Salt Lake Base and Meridian, Tooele County, Utah

Section : The south ½ of the southwest ¼ of the southeast ¼ of the northwest ¼. (oil and gas)

Township 12 South, Range 19 West, Salt Lake Base and Meridian, Juab County, Utah

Section 28: The north ½ of the northwest ¼ and the southeast ¼ of the northwest ¼. (all minerals)

Section 29: The west ½ of the east ½, the northeast ¼ of the northeast ¼, and the east ½ of the southeast ¼. (all minerals)

Section 30: The south ½ of the northeast ¼. (all minerals)

Township 12 South, Range 20 West, Salt Lake Base and Meridian, Juab County, Utah

Section 12: Lots 3 and 4. (all minerals)

Section 13: All. (all minerals)

Section 24: All. (all minerals)

(e) LANDS HELD BY THE GOSHUTE INDIAN TRIBE AS A PRIVATE PARTY.—The lands referred to in section 3(e), comprising approximately 5 acres, are described as follows:

GOSHUTE TRIBAL CEMETERY

Township 10 South, Range 19 West, Salt Lake Base and Meridian, Tooele County, Utah

Section 4: The south ½ of the southwest ¼ of the southeast ¼ of the northwest ¼.

(f) FEDERAL LANDS SURROUNDING GOSHUTE TRIBAL CEMETERY.—The lands referred to in section 3(f), comprising approximately 360 acres, are described as follows:

(1) Township 10 South, Range 19 West; Salt Lake Base and Meridian, Tooele County, Utah

Section 4: Lots 3 and 4, the southwest ¼ of the northwest ¼, the east ½ of the southeast ¼ of the northwest ¼, the northwest ¼ of the southeast ¼ of the northwest ¼, the north ½ of the southwest ¼ of the southeast ¼ of the northwest ¼, and the southwest ¼.

Section 9: The northwest ¼ of the northwest ¼.

(g) LANDS HELD BY THE STATE OF UTAH.—(1) The lands referred to in section 4(a), comprising approximately 860.16 acres and including the surface and subsurface estates, are described as follows:

Township 11 South, Range 19 West, Salt Lake Base and Meridian, Juab County, Utah

Section 16: The east ½ of the west ½ and the east ½.

Fractional Township 11 South, Range 20 West, Salt Lake Base and Meridian, Juab County, Utah

Section 36: All.

(2) The lands referred to in section 4(b), comprising approximately 1,275.91 acres and including only the subsurface estate, are described as follows:

Township 12 South, Range 19 West, Salt Lake Base and Meridian, Juab County, Utah

Section 30: Lot 1, the north ½ of the northeast ¼, the northeast ¼ of the northwest ¼.

Section 33: The south ½ of the northeast ¼.

Section 34: The southwest ¼ of the northeast ¼, the south ½ of the northwest ¼ and the southwest ¼.

Section 28: The southwest ¼ of the northwest ¼.

Section 29: The southeast ¼ of the northeast ¼.

Section 27: The southeast ¼ of the northwest ¼, the northeast ¼ of the southwest ¼, the southwest ¼ of the southwest ¼.

Section 28: The east ½ of the southeast ¼.

Section 27: The northwest ¼ of the northwest ¼.

Section 35: The northwest ¼ of the southwest ¼.

Section 27: The southeast ¼ of the southwest ¼.

Section 33: The northeast ¼ of the northeast ¼.

Section 34: The northwest ¼ of the northwest ¼.

Section 28: The west ½ of the northeast ¼, the northeast ¼ of the southwest ¼, the southwest ¼ of the southeast ¼.

Section 28: The west ½ of the southwest ¼, the northwest ¼ of the southeast ¼.

(h) CERTAIN FEDERAL LANDS ADJACENT TO THE GOSHUTE INDIAN RESERVATION.—The lands referred to in section 6, comprising approximately 640.00 acres, are described as follows:

17

Township 9 South, Range 19 West, Salt Lake Base and Meridian, Tooele County, Utah

Section 21: The southeast ¼ of the southeast ¼.

Section 27: The west ½ of the west ½.

Section 28: The east ½ of the east ½.

Section 33: The northeast ¼ of the northeast ¼.

Section 34: The southeast ¼ of the southwest ¼.

Township 10 South, Range 19 West, Salt Lake Base and Meridian, Tooele County, Utah

Section 9: The south ½ of the northeast ¼, the north ½ of the southeast ¼, the southeast ¼ of the southeast ¼, the east ½ of the southwest ¼ of the southeast ¼, east ½ of the northwest ¼ of the southwest ¼ of the southeast ¼.

○

●S 1687 IS

100TH CONGRESS
1ST SESSION

S. 1849

For the relief of Mr. Conwell F. Robinson and Mr. Gerald R. Robinson.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5, 1987

Mr. MELCHER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

For the relief of Mr. Conwell F. Robinson and Mr. Gerald R. Robinson.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a)(1) the Secretary of the Interior shall grant a life estate special use permit to Mr. Conwell F. Robinson and Mr. Gerald R. Robinson to use the property in Glacier National Park described in paragraph (2).

(2) The property referred to in paragraph (1) is Tract 398 which is property formerly owned by the Robinson brothers. The property was originally homesteaded by maternal grandparents of the Robinson brothers prior to the creation of Glacier National Park and was deeded to their

grandmother, Margaret McCarthy, by President Woodrow Wilson on April 23, 1915. Tract 398 was taken from the Robinson brothers by condemnation through an eminent domain action brought by the United States Government in 1967.

(b)(1) The special use permit granted by this Act shall be extended for a period coincident with the lives of Conwell F. Robinson and Gerald R. Robinson.

(2) The special use permit granted by this Act shall grant to Conwell F. Robinson and Gerald R. Robinson reasonable use of the property.

(c) Any fee collected for the special use permit required by this Act shall be fair and reasonable and in an amount necessary to cover the administrative costs associated with granting the permit, except that in no event shall the fee collected exceed $100 per annum.

(d) The Secretary shall promulgate such regulations as the Secretary deems are necessary to insure that the life estate special use permit granted by this Act does not unreasonably diminish the scenic, historic, and other values for which the Glacier National Park was established.

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II

100TH CONGRESS
2D SESSION

S. 2264

To authorize the Secretary of the Interior to exchange certain Federal mining rights for certain lands in New Mexico.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 1988

Mr. DOMENICI (for himself and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To authorize the Secretary of the Interior to exchange certain Federal mining rights for certain lands in New Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The Secretary of the Interior is authorized to exchange certain lands as identified for disposal in the Southern Rio Grande Plan Amendment, for certain mining claims on lands withdrawn for the National Aeronautic and Space Administration and New Mexico A&M College (now New Mexico State University) under P.L.O. 3685 and P.L.O. 2051. Once the United States determines the claims are valid under existing law, the exchange authorized by the

preceeding sentence shall to be made on an equal value basis as determined by an independent appraisal.

SEC. 2. (a) The Secretary of the Interior is authorized and directed to make available for exchange the Federal interests in the lands described in subsection (b) for the private interests in the lands described in subsection (c). The exchange shall be made in a manner consistent with applicable provisions of law and shall be on the basis of equal value.

(b) The Federal interests to be made available for exchange under this section are those lands in sections 13, 14, 15, 22, 23, 24, 25, 26, and 35 of T 23 S, R 2 E, New Mexico Principle Meridian.

(c) The private interests to be exchanged pursuant to this section are those lands owned by New Mexico State University in sections 19, 29, 30, and 31 of T 22 S, R 4 E, and section 6 of T 23 S, R 4 E, New Mexico Principle Meridian.

(d) Lands not acquired by New Mexico State University pursuant to this section and which are encompassed by P.L.O. 3685 and P.L.O. 2051 may be disposed of by sale to or exchange with the State of New Mexico, New Mexico State University, or other public and private entities: *Provided however,* That New Mexico State University is given a right of first refusal on any proposed disposition. The National Aeronautic and Space Administration and the Bureau of Land Management are directed to immediately begin negotia-

tions to review P.L.O. 3685 and identify lands that may be in excess of the withdrawal needs.

(e) Notwithstanding any other provision of law, the Secretary of the Interior, if the secretary determines it is necessary and appropriate for the purpose of consummating an exchange of lands or interests therein under this act, is hereby authorized and directed to revoke P.L.O. 2051.

O

Senator MELCHER. The hearing record will remain open for two weeks to receive additional comments and material.

And with that, I now recognize Senator Hecht from Nevada.

Senator HECHT. Thank you, Mr. Chairman. I'm waiting for some information. Could we please hold off on S. 1461 for about 15 minutes?

Senator MELCHER. We sure can.

Senator HECHT. Can we take another one first?

Senator MELCHER. We'll take another one first, and the next one is S. 1687, a bill to correct some oversights in the Utah component of the Confederated Tribes of the Goshute Reservation.

Senator Garn is recognized now.

Senator GARN. Thank you, Mr. Chairman. I have another hearing I need to be at that started at the same time in the Banking Committee. So, I just ask unanimous consent that my statement be included in the record.

Senator MELCHER. Without objection, so ordered.

[The prepared statement of Senator Garn follows:]

STATEMENT OF
SENATOR JAKE GARN
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
ON
S. 1687, THE GOSHUTE RESERVATION BILL

MR. CHAIRMAN: I appreciate the Subcommittee scheduling this hearing regarding S. 1687, a bill making modifications to the Goshute Indian Reservation. As the original sponsor of this bill, I wholeheartedly voice my support for this bill and my hope that the Subcommittee will see fit to report it to the full Senate. This bill, as introduced, is identical to H.R. 2839, which has already passed the House.

Mr. Chairman, this bill is designed to correct several historical and geographical oversights in the original establishment of the Utah component of the Confederate Tribes of the Goshute Reservation. This bill will unify the land base, which currently constitutes the Goshute Reservation, as well as simplify the external boundaries of the "Utah" portion of the Reservation. As the Committee knows, the Goshute Reservation is located in both western Utah and eastern Nevada, and straddles the Utah-Nevada border. I should mention at the outset that both Senators from Nevada were contacted regarding this legislation with no contrary comments to the bill being received by my office.

The Goshute Indian Tribe is a small tribe, when compared to other Federally-recognized tribes throughout the country. Total membership is now at 400 members. However, the Goshute Indians have occupied the lands on or near the existing reservation since the first settlers began exploring the western portion of the United States. The creation of a reservation by President Wilson along the Utah-Nevada border almost 85 years ago recognized the

longstanding existence of the Tribe in this area. Since that time, the Tribe has been beset by boundary problems which have plagued the administration of tribal affairs on their lands. S. 1687 will resolve these problems.

The primary boundary problem lies in a section of land known as "the strip." When President Wilson issued the executive order creating the Reservation, the order did not extend the "Utah" portion of the reservation all the way to the Utah-Nevada border. This oversight has left a strip of land one-quarter mile wide and eight miles long between the current western boundary of the Reservation and the Utah-Nevada border. The "Nevada" portion of the Reservation was created in 1938, and the eastern border of that portion was extended to the Utah-Nevada border with the intent of forming one continuous reservation with the "Utah" portion. It is my belief, as well as the Tribe's, that the omission of this "strip" was an oversight, and that the United States - both Congress and the Administration - intended both portions to be physically joined providing consistency to the Reservation's boundary. The lands in this strip consist of 1,754 acres of Bureau of Land Management (BLM) land and an enclave of 320 acres of private land. The BLM acres will be added to the existing reservation with no impact on the private lands.

The bill will also add existing lands held in trust for the Tribe by the Federal Government as part of the Reservation. This includes 80 acres of land within the existing boundaries and 1,440 acres of land adjacent to the Reservation. To further streamline the Reservation's boundaries, the bill adds 5 acres of land used by the Tribe as a cemetery plus a small surrounding area to the headquarters part of the Reservation. This action

will provide unrestricted access by the Tribe to the cemetery. To complete this transfer, S. 1687 unifies the surface and subsurface rights of these lands and places them in trust for the Tribe as a part of the Reservation.

Mr. Chairman, as I indicated earlier, S. 1687 is similar to H.R. 2839, which passed the House on November 16, 1987. Since the introduction of S. 1687, I have been apprised of several modifications that should be made to the bill in order to achieve the bill's objectives. I propose the following changes. First, my office has been informed that there are no locatable minerals within the proposed tribal boundary, and hence no valid existing mining claims in the area. Given this, subsection (c) of Section 2 of the bill is unnecessary and should be deleted from the bill. Secondly, subsection (b) of Section 1 is a restatement of the Tribe's Winters Doctrine Rights, and issues pertaining to water can be more effectively addressed in report language. This subsection should also be deleted from the bill. Finally, there are several technical changes to Section 5 of the bill related to the future purchase of lands within the Reservation which should be adopted. One of these changes would delete the words "adjacent to, or in close proximity to" in the Section's title and subsection (a) and (c). With these changes, I would propose that subsections (a) and (c) read as follows, with the additions to the subsections underscored:

"(a) AUTHORITY. - The Secretary is authorized to acquire by donation, exchange, purchase <u>on a willing-seller basis,</u> any lands or interests in lands within <u>the</u> boundaries of the Reservation for the use and benefit of the Tribe."

"(c) FUNDS FOR PURCHASE. - The Secretary is authorized to purchase, <u>on a willing-seller basis,</u> with funds made available by the Tribe <u>for this purpose,</u> any lands or interests in lands within the boundaries of the Reservation."

This language specifies the Tribe's authority to use its funds for purchases on a willing-seller basis within the exterior boundary of the Reservation. I believe the Subcommittee should amend S. 1687 in this manner. It is my hope that after the Senate's action is completed, the House will approve these changes and this matter can be resolved during the 100th Congress.

The main thrust, Mr. Chairman and members of the Subcommittee, of S. 1687 is to transfer close to 2,200 acres to the Goshute Indian Reservation. It is important to note that all of this land was at one time part of the aboriginal area of the Goshutes. I would refer the Subcommittee to the submitted testimony by the Goshute Chairman regarding the 1977 court case on this issue for an account of how these lands were "lost" to the tribe. It is only proper that Congress restore this acreage to the tribe as well as "clean-up" historical oversights in the creation and the development of the reservation. Public hearings have been conducted during the past several years on this proposed legislation. I am pleased to report to the Subcommittee that comments from all interested parties were taken into consideration in the development of this legislation and have produced a final product which I believe should be passed, with slight modification, by this Subcommittee and adopted by the full Senate.

The 100th Congress has a unique opportunity to correct the unintended drafting oversights and simplify the Goshute Reservation's boundaries. I believe this small band of Indians of Western Utah deserves the Congress' recognition of past drafting mistakes and a willingness to equitably resolve them.

Again, I thank the Chairman for bringing this legislation to the Subcommittee's attention, and I urge the Subcommittee to report out S. 1687 with the above-mentioned changes.

Senator MELCHER. And Senator, we will be very conscientious in performing our duties in the subcommittee on your bill.

On this bill, S. 1687, we will now hear from Joe Christie Acting Deputy to the Assistant Secretary of Indian Affairs from the Department of the Interior.

STATEMENT OF JOE C. CHRISTIE, ACTING DEPUTY TO THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, TRUST AND ECONOMIC DEVELOPMENT, DEPARTMENT OF THE INTERIOR

Mr. CHRISTIE. Good morning, Mr. Chairman and members of the committee. I am pleased to present the views of the Department of the Interior on S. 1687, a bill to correct historical and geographical oversights in the establishment and development of the Utah component of the Confederated Tribes of the Goshute Reservation, to unify the land base of the Goshute Reservation, to simplify the boundaries of the Goshute Reservation, and for other purposes.

We have no objection to the enactment of S. 1687, if the amendments we recommend are adopted, including a requirement for the fair market value to be paid for conveyance of certain Federal interests.

You have a copy of my statement, and I will submit that for the record. I would like to generally summarize and then be open for questions.

S. 1687 would provide for the United States to hold certain lands in trust for the use and benefit of the Confederated Tribes of the Goshute Reservation and to make those lands part of the reservation. These lands include:

A, lands described and set aside for the Goshute and other Indians in Executive Order 1539 and in Executive Order 1903 comprising approximately 34,560 acres;

B, lands apparently unintentionally omitted from inclusion by Executive Order 1903 comprising approximately 1,753 acres of public domain lands in Juab County, Utah;

C, Federal but non-Indian lands within the boundaries of the Executive Order 1539 and 1903 areas comprising 80 acres in Juab County, Utah;

D, lands held in trust for the tribe but not part of the reservation comprising approximately 5,075.69 acres in Tooele and Juab Counties, Utah;

E, all right, title and interest of the United States in and to the subsurface estates in some 1,089 acres described in section 10(d). The surface estates are held in trust for the tribe by the United States.

F, lands owned by the tribe in fee comprising approximately 5 acres of land used as a Goshute tribal cemetery in Tooele County, Utah;

And G, Federal lands surrounding the Goshute tribal cemetery comprising approximately 360 acres in Tooele County, Utah.

Section 1 of the bill would vest the Confederated Tribes of the Goshute Reservation with a trust title interest in their executive order lands. We believe that section 1 does not alter the current trust status of those lands or the priority date for the water rights involved. However, we have no objection to the provision.

Secondly, the administration position that land obtained by the tribe should be compensated at a fair market value stems from Public Law 94-571, the Federal Lands Policy Management Act, title II, section 203, dealing with sales. However, we do believe that there are three exceptions to this fair market value compensation. First of all, we believe that the 1,753 acres in the strip should not be compensated as the Indian Court of Claims found that the tribe's aboriginal title to some 128,000 acres was not extinguished, and no compensation was provided. Because of this, we do not believe that they should have to compensate for the 1,753 acres of that strip.

Secondly, the 1,089 subsurface acres are for the most part located in this 128,000 acres, and for the same reason, we do not believe that compensation would be required in that case.

Thirdly, the 80 acres located within the reservation that is currently used for agency buildings and other structures. We have authority under 40 U.S.C. 483(a)(2) that if those are excess, that they can be turned over to the tribe without any cost to the tribe. So, we believe that those three exceptions should be made to the fair market compensation.

We understand that sections 4 and 10(g) of the bill are intended to provide that if certain interest in land owned by the State of Utah but surrounded by the Goshute Reservation are acquired through exchange with the tribe or the Bureau of Land Management, that the title shall be taken in trust by the United States for the Goshute Tribe and the land added to the reservation. Section 4(a) should be amended to apply only to public domain land. As currently written, it would prevent a Federal agency from acquiring land in that area for use by that agency.

Section 5 provides land acquisition and exchange authorities for the tribe which are similar to existing authorities available to the tribe under provisions in 25 U.S.C. 464, 465, and 467 and 2201 through 2211. In some respects, section 5 is more restrictive than current authorities, and we believe it should be amended to state that section 5 is in addition to other authorities available.

And lastly, section 8 states that lands taken in trust under the bill are subject to the same Federal laws that apply to the lands comprising the reservation of the tribe on the day of the enactment of this act. This section we feel is unnecessary.

This concludes my prepared statement. I'd be pleased to answer any questions that the committee may have.

[The prepared statement of Mr. Christie follows:]

STATEMENT OF JOE C. CHRISTIE, ACTING DEPUTY TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS (TRUST AND ECONOMIC DEVELOPMENT), DEPARTMENT OF THE INTERIOR BEFORE THE ENERGY AND NATURAL RESOURCES SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, UNITED STATES SENATE, HEARING ON S. 1687, A BILL "TO CORRECT HISTORICAL AND GEOGRAPHICAL OVERSIGHTS IN THE ESTABLISHMENT AND DEVELOPMENT OF THE UTAH COMPONENT OF THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION, TO UNIFY THE LAND BASE OF THE GOSHUTE RESERVATION, TO SIMPLIFY THE BOUNDARIES OF THE GOSHUTE RESERVATION AND FOR OTHER PURPOSES."

May 20, 1988

Good morning Mr. Chairman and members of the Committee, I am pleased to present the views of the Department of the Interior on S. 1687, a bill "To Correct historical and geographical oversights in the establishment and development of the Utah component of the Confederated Tribes of the Goshute Reservation, to unify the land base of the Goshute Reservation, to simplify the boundaries of the Goshute Reservation, and for other purposes."

We would have no objection to the enactment of S. 1687, if the amendments we recommend are adopted, including a requirement that fair market value be paid for conveyance of certain Federal interests.

S. 1687 would provide for the United States to hold certain lands in trust for the use and benefit of the Confederated Tribes of the Goshute Reservation and make those lands part of the Reservation. These lands include:

(a) Lands described and set aside for the Goshute and other Indians in Executive Order 1539 (May 29, 1912) and in Executive Order 1903 (March 23, 1914), comprising approximately 34,560 acres.

(b) Lands apparently unintentionally omitted from inclusion by Executive Order 1903 comprising approximately 1,753 acres of public domain lands in Juab County, Utah.

(c) Federal but non-Indian lands within the boundaries of the Executive Order 1539 and 1903 areas comprising 80 acres in Juab County, Utah.

(d) Lands held in trust for the tribe but not part of the reservation comprising approximately 5,075.69 acres in Tooele and Juab Counties, Utah.

(e) All right, title and interest of the United States in and to the subsurface estates in some 1,089 acres described in section 10(d). The surface estates are held in trust for the tribe by the United States.

(f) Lands owned by the tribe in fee comprising of approximately 5 acres of land used as a Goshute Tribal Cemetery in Tooele County, Utah.

(g) Federal lands surrounding the Goshute Tribal Cemetery comprising approximately 360 acres in Tooele County, Utah.

The Goshute Indian Reservation is in the States of Nevada and Utah. The largest portion, 70,489 acres, is located in the northeastern portion of White Pine County, Nevada which is about 100 miles northeast of Ely, Nevada. The remaining approximately 38,803 acres extends into the northwest corner of Juab and Tooele Counties, Utah located some 175 miles southwest of Salt Lake City, Utah.

Executive Order 1539 (May 29, 1912) and Executive Order 1903 (March 23, 1914) reserved from settlement, entry, sale, or other disposition, and set aside lands in Utah for the use and benefit of the Goshute and other Indians. Since issuance of the orders the lands have been administered as the Goshute Reservation. Section 1 of the bill would vest the Confederated Tribes of the Goshute Reservation with a trust title interest in their Executive Order lands. We believe that section 1 does not alter the current trust status of

those lands or the priority date for the water rights involved. However, we have no objection to the provision.

Section 2 of the bill preserves existing rights in the lands covered by the bill. Among other things, section 2 continues existing leases and merely changes the lessor. We do recommend that section 2(b) be amended to clarify that the Secretary also has responsibility for the lands as trustee after the conveyance.

Sections 3(a) and 10(a) would provide that lands unintentionally omitted from inclusion in Executive Order 1903 be held in trust for the tribe as part of the reservation. Executive Order 1903 did not extend the boundaries all the way to the Utah-Nevada State line. This omission or oversight left a strip of land about 1 mile wide and 10-12 miles long between the western boundary of the reservation and the Utah-Nevada State line.

The Act of April 13, 1938 (52 Stat. 216), provided for a reservation in east central Nevada extending the eastern reservation boundary to the Nevada-Utah State line. The legislative history of the 1938 Act is unclear as to whether it was the intent of Congress to add this acreage to the existing Utah Goshute Reservation or to create a separate reservation for the Goshutes in Nevada. This reservation area has been administered as part of the Goshute Reservation in Utah and is separated from the rest of the reservation by the thin strip of Federal land consisting of approximately 1,753 acres on the Utah side of the State line. This leads us to believe that it was by error that this small strip of land was omitted from the Executive Order 1903. Sections 3(a) and 10(a) of S. 1687 would transfer this land in trust for the Confederated Tribes and add it to the Goshute Reservation.

On October 16, 1962, the Indian Claims Commission found (37 Ind. Cl. Comm. 41) that the Goshute Tribes had established aboriginal title to an area of

approximately 5,952,000 acres located in the States of Nevada and Utah including the lands described in S. 1687. The Commission subsequently found that Indian Title had been extinguished as of January 1, 1875 and the Goshutes (Goshute and Skull Valley Tribes) were awarded a total of $7,300,000 ($5,142,420 was Goshute's final share of the award). The land values established by the ICC indicated a value of $1.00 per acre for Sagebrush-grass to $.50 per acre for desert shrub at the time of taking in 1875. The ICC found that the tribe's aboriginal title to some 128,196 acres was not extinguished and no compensation was provided for that land including the 1,753 acres strip. Therefore, we are not asking for compensation for this land.

In 1921, pursuant to the General Allotment Act, 160 acres of the Executive Order 1903 Reservation land was allotted to the heirs of Pon Dugan, a Goshute Indian. A few years later the Department of the Interior discovered that the land it had allotted included various agency buildings. In 1926 the Department reacquired 80 acres of the original allotment for agency purposes. The records show that these 80 acres located in the middle of the reservation were reconveyed by the heirs of Pon Dugan to the United States. This land is presently vacant and is not being utilized. Sections 3(b) and 10(b) of S. 1687 would declare the land to be held in trust for the tribe. The remaining 80 acres of the original allotment which is part of the existing reservation is being held in trust for the heirs of Pon Dugan and would not be affected. Although the 80 acres being conveyed to the tribe was purchased by the United States, we do not believe that the tribe should be required to pay fair market value for it because under 40 U.S.C. 483(a)(2) excess Federal real property located within an Indian reservation is to be taken into trust by the Secretary for the tribe occupying the reservation without cost to the tribe.

Through the 1930's and 1940's the United States acquired land within or adjacent to the Goshute Indian Reservation for the Tribe. These lands consisting of approximately 5,075 acres were taken in trust for the Tribe but never proclaimed as part of the reservation although this could be done under the provision in 25 U.S.C. 467. Sections 3(c) and 10(c) of S. 1687 would accomplish this.

In addition, the surface of some 1,089 acres was acquired by the United States in trust for the tribe. This land is adjacent to other tribal trust land. The subsurface title had previously been reserved by the United States. Sections 3(d) and 10(d) would declare these subsurface interests also held in trust for the tribe. Most of this land is in the same situation as the 1,753 acres above for which the tribe was not compensated in the ICC award. Therefore, we believe the tribe should only have to pay for the subsurface rights to the two parcels not in that area.

Under the Cemetery Act of March 1, 1907 (34 Stat. 1052; 43 U.S.C. 682) the Goshute Tribe acquired a cemetery consisting of 5 acres. These lands are owned by the Tribe in fee and are subject to State and local taxation. This land borders tribal trust land and Federal land. Under sections 3(e) and 10 (e) of the bill, the 5 acre parcel would be added to the reservation. We have no objection to adding this small tribal cemetery to the reservation because it is used for the benefit of tribal members and not for commercial purposes.

Sections 3(f) and 10(f) of the bill would add some 360 acres of public domain lands which border the Indian cemetery to the reservation. We believe that it would be appropriate for the tribe to pay fair market value for this land.

We would like section 3(g) of the bill amended to provide that the map of the lands added to the reservation be on file in the BIA land records office

having jurisdiction over the lands. This will provide better access to those interested.

The enactment of S. 1687 would not only consolidate the landholdings of the Goshute Tribe but would also provide the Tribe with a larger land base to improve the economy of the Tribe and its members through farming, grazing and recreation. Such development would benefit the Indian and non-Indian community. It is our understanding that the public domain land described in section 10 of S. 1687 is characterized as grazing land valued at $35 to $50 per acre.

We understand that sections 4 and 10(g) of the bill are intended to provide that if certain interests in land owned by the State of Utah but surrounded by the Goshute Reservation are acquired through exchange with the tribe or the Bureau of Land Management, the title shall be taken in trust by the United States for the Goshute Tribe and the land added to the reservation. Section 4(a) should be amended to apply only to public domain land. As currently written, it could prevent a Federal agency from acquiring land in that area for use by that agency.

Section 5 provides land acquisition and exchange authorities for the tribe which are similar to existing authorities available to the tribe under the provisions in 25 U.S.C. 464, 465, 467, and 2201 through 2211. In some respects section 5 is more restrictive than current authorities and we believe it should be amended to state that section 5 is in addition to other authorities. Section 7 of the bill would extinguish any right of the United States to construct ditches and canals on land acquired under section 5. We do not believe that section 7 is intended to preclude the possibility of the tribe wanting to irrigate these lands in the future and we suggest that the Committee so indicate in its report on the bill.

Section 6 and 10(h) would require the Secretary to consider the desires and needs of the tribe before approving the disposal of a certain 640 acres of Federal land adjacent to tribal lands.

Section 8 states that the land taken in trust under the bill are subject to the same Federal laws that apply to the "lands comprising the Reservation of the Tribe on the day of the enactment of this Act." This is unnecessary.

Section 9 provides definitions for the bill and we have no objection to them.

To correct errors in the land descriptions contained in section 10 of the bill and to resolve other concerns that I have described, we recommend that the bill be amended as we suggest in the attached list of amendments.

We note that one of the amendments to the House-passed companion bill H. R. 2839 to correct the land description for the Federal lands surrounding the Goshute Tribal Cemetery is incorrect. This amendment would unintentionally omit 160 acres and would duplicate a 10-acre parcel land description. The land as described in section 10(f) of S. 1687 is correct and should not be amended. However, we do agree with the other three amendments to the land description adopted by the House which are included in our attached list of suggested amendments to S. 1687.

We also note that H. R. 2839 includes our amendments numbered 1, 2, 4, and 6 on the attachment to this statement. It does not include amendments numbered 3, 5, and 7 which we recommend that the Senate adopt.

This concludes my prepared statement and I will be pleased to answer any question that the Committee may have.

Department of the Interior

RECOMMENDED AMENDMENTS TO S.1687:

1. Amend section 2(b) by inserting before the period at the end of the first sentence the following: "or the Secretary as trustee" and by inserting after "Tribe" in the second sentence the following "or the Secretary as trustee".

2. Amend section 3(g) by deleting the last sentence and inserting in lieu thereof:

> "A map depicting the lands added to the Reservation by this Act shall be on file and available for public inspection in the Bureau of Indian Affairs' Land Title Record Office having jurisdiction over these lands."

3. Section 4(a) is amended by inserting after "United States" the first time the term appears the following: "as the result of an exchange of public domain land".

4. Section 5 is amended by adding the following new subsection at the end thereof:

> "(f) The provisions of this section are in addition to and not in derogation of any authority under any other Federal law."

5. A new section 11 should be added to the bill to read as follows:

> "The conveyance of interests of the United States under sections 3 and 4 of this Act in lands located in Tooele County, Utah and of the lands in section 3(b) of this Act shall be subject to the payment by the Tribe of fair market value for those interests as determined by the Secretary.

6. Technical corrections to the land descriptions in section 10:

> On line 7, page 10 the word "southeast" is replaced with the word "southwest" in each instance.

> On line 5, page 13, the word "southeast" is replaced with the word "southwest".

> On line 24, page 13, insert the number "4" after the word "Section".

7. Also in section 10, page 9, line 9, we suggest that the words "public domain" be deleted and the word "acquired" be inserted in lieu thereof.

Senator MELCHER. Thank you very much, Mr. Christie. Your whole statement will be made part of the record.

The subcommittee may have some questions which we will direct to you in writing, but we appreciate your briefness and straightforwardness in your testimony. And we will take note of your proposed amendment. Thank you very much.

Now we will hear on S. 1849, for the relief of Mr. Conwell F. Robinson and Mr. Gerald Robinson. We will hear from Denis Galvin, Deputy Director of the National Park Service.

[A prepared statement of Senator Baucus follows:]

STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM MONTANA

Mr. Chairman, let me begin by thanking you for calling today's hearing on S. 1849, legislation to allow Con Robinson to live on his family's homestead for the remaining years of his life.

I first became involved with the subject of today's hearing in 1983. Prior to the introduction of legislation, I tried every possible avenue working with the Park Service, but to no avail. Senator Melcher and I agree that the legislation being considered today is necessary. Con Robinson, a private citizen, has been unfairly treated.

In addition, the actions of the Park Service also were most likely incontravention of park policy.

Over-zealous management, pursuing a policy of ridding Glacier National Park of inholdings, allowed Mr. Robinson's rights to be trampled.

Reducing inholdings in the park is both a correct policy and one that I support. More people visit Glacier Park each year than live in all of Montana. These people come to enjoy the majestic peaks, the splendid vistas and the abundant wildlife. Glacier National Park is one of the jewels of our National Park System. It needs to be protected in its untrammeled state for this generation and further generations to enjoy.

But Glacier was not carved out of pure wilderness. By the time its beauty was recognized, homesteading and development around its edges had already begun to occur. Very few people realize it, but the first oil well exploration in Montana occurred a short distance from the site of the Robinson homestead in what today is considered pristine parkland.

The question being posed today is not one of policy but one of fairness in implementing that policy. Mr. Robinson is here today so I will not go into the details of his case, but I do want to highlight what I interpret has happened.

During 1965, an over-zealous assistant park superintendent began a series of steps that resulted in the condemnation of the Robinson, or more correctly, the McCarthy homestead. The Robinsons had requested life use of the property, but the government refused to even consider it.

While life use of the property was denied to Mr. Robinson in 1967, 1 year later it became the official policy for inholdings in Glacier National Park. Inholders would not be pushed off their land. The retention of life estates became the official policy of the park.

The Park Service would only resort to condemnation in extreme circumstances. The inholders policy then went on to state:

"No condemnation of privately owned land (would be allowed) except where the property is needed for development of public use facilities or where the owners proposed to change the use of their property in a manner that is incompatible with the purposes for which the park was established."

Over 20 years has elapsed and the Park Service still hasn't developed a public use facility on Mr. Robinson's property. There has never been contemplated a change in use for the property.

Mr. Chairman, Mr. Robinson has been treated unfairly. This situation needs to be redressed. The legislation being considered today would solve this problem once and for all.

The enabling legislation creating Glacier Park and the illegal treatment given the Robinsons provides a basis for the Park Service to administratively address this wrong, but the Park won't act. Those who argue that allowing Mr. Robinson to have life tenancy would set a bad precedent are ignoring equity and fairness. The real precedent is the Park Service's unwillingness to rectify an illegal act.

The Park Service won't act, so we as responsible representatives must act.

It is my hope that this Committee will move quickly, and that legislation will be enacted by the 100th Congress giving Mr. Robinson life tenancy.

Thank you.

STATEMENT OF DENIS P. GALVIN, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. GALVIN. Thank you, Mr. Chairman. I have a prepared statement. I'll submit it for the record, if it pleases the Chair, and I will simply summarize it.

I am pleased to be here today to discuss S. 1849. We recommend against enactment of this measure. S. 1849 would provide, through a special use permit, a life estate for the Robinsons.

I would like to provide some background information regarding this particular tract which is in the western portion of Glacier National Park.

In October 1965, Mrs. William Rae stopped by Glacier National Park to inquire if the government were interested in buying the Robinson property, approximately 130 acres. She indicated that it was the family's intention to dispose of the property either by sale to the National Park Service, which they preferred, or by dividing it and selling it for development. It was their intention to retain a small portion of the land for their use.

The National Park Service had the property appraised, but the owners were not satisfied with the first offer of approximately $65,000. A second appraisal was sought, and the National Park Service offered 10 percent more than the appraised value. The second appraisal was very close to the first appraisal.

The owners asked about reserving use and occupancy, but were told that the value of any such reservation would be deducted from the appraised value.

There appears to have been no disagreement between the owners and the National Park Service over any issue except the price.

Further, according to information in our files, it appears that the owners agreed to a condemnation proceeding as a means of obtaining a court decision on a fair price. The period of time from the initial contact to the filing of a declaration of taking was approximately two years. The declaration of taking was filed on September 8, 1967.

Once the declaration of taking was filed, we were informed that it was not legally possible for the former owners to reserve use and occupancy. Notwithstanding that, a final settlement was reached for the price of $82,500. And as part of that settlement, a special use permit for the former owners for a 5-year term with provision for a 5-year extension was granted. All parties to the transaction agreed to all terms.

The former owners have had the use of the structures and 3 acres of land for 15 years, 5 years beyond the original agreed upon period. To permit further extensions would be contrary to the settlement agreement. The Federal Government has consistently dealt fairly and openly with the Robinsons and other parties to the transaction.

The granting of a life estate to the Robinsons would not be fair to the holders of an additional 14 reservations of use and occupancy in effect in Glacier National Park, 6 of which are for terms of

years ending at various times between 1991 and 2002. And there are seven life estates. These owners paid fair value for these reservations.

S. 1849 provides only for a nominal payment by the Robinsons of not more than $100 per year. The bill, in effect, provides for a gift from the United States to the Robinsons. If special treatment is given to the Robinsons, these other occupants would feel entitled to get back what they paid and to have their terms extended to life estates without charge.

We believe this bill sets a bad precedent. It places the Congress in the position of renegotiating the terms of a settlement fairly reached over 20 years ago. It overturns a transfer of property agreed to by all parties. We would note that there are many other such agreements mutually adhered to throughout the National Park System, and we see no reason for Congress to single out this particular situation.

That concludes my prepared statement, Mr. Chairman. I'd be happy to answer any questions.

[The prepared statement of Mr. Galvin follows:]

STATEMENT OF DENIS P. GALVIN, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS & FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S. 1849, A BILL FOR THE RELIEF OF MR. CONWELL F. ROBINSON AND MR. GERALD R. ROBINSON.

MAY 20, 1988

Mr. Chairman and Members of the Committee, it is a pleasure to be here today to discuss S. 1849, a bill for the relief of Mr. Conwell F. Robinson and Mr. Gerald R. Robinson.

We strongly recommend against enactment of S. 1849.

S. 1849 would provide, through a special use permit, a life estate for the Robinsons in property acquired by the United States Government in 1967.

I would like to provide some background information regarding the Robinson tract.

On October 8, 1965, Mrs. William Rae, spokesperson for the Robinson family, stopped by Glacier National Park headquarters to inquire if the Government were interested in buying the Robinson property, consisting of approximately 130 acres. Mrs. Rae said the family wanted to sell the property and wanted to give the United States an opportunity to purchase. We were advised, at the outset, that it was the family's intention to dispose of the property, either by sale to the National Park Service, which they preferred, or by dividing it and selling it for development. In the event the owners sold to other than the National Park Service, it was their intention to retain a small portion of the land.

The National Park Service had the property appraised, and the owners were not satisfied with the offer of approximately $65,000. A second appraisal was sought, and the National Park

Service offered 10 percent more than the appraised value in order to try to obtain an agreement.

The owners asked about reserving use and occupancy, however, this idea was abandoned because it seemed more important for the family to sell for a specific amount of money. The value of any reservation of use and occupancy would be deducted from the appraised value. Nonetheless, the idea recurred from time to time.

There appears to have been no disagreement between the owners and the National Park Service over any issue except the price. Further, according to information in our files, it appears that the owners agreed to a condemnation proceeding as a means of obtaining a court decision on a fair price, a so-called "friendly" condemnation proceeding. The period of time from the initial contact to the filing of a declaration of taking was approximately two years. The declaration of taking was filed on September 8, 1967.

Once the declaration of taking was filed, we were informed that it was not legally possible for the former owners to reserve use and occupancy since title had passed to the United States. Therefore, settlement discussions turned to a special use permit later in the process.

The final settlement was $82,500 and was accompanied by issuance of a special use permit to the former owners for a 5-year term with a provision for a 5-year extension. All parties agreed to all terms; and, the document was executed about one year later by all necessary parties.

The former owners have had the use of the structures and 3 acres for 15 years, 5 years beyond the original agreed-on period. To permit further extensions would be contrary to the settlement agreement to which all family members and the Government were

party. The Federal Government has consistently dealt fairly and openly with the Robinsons.

Further, the granting of a life estate to the Robinsons would not be fair to holders of the existing 14 reservations of use and occupancy in effect in Glacier National Park, six of which are for terms of years ending at various times between 1991 and 2002, and seven life estates. The owners paid fair value for these reservations. S. 1849 provides only for a nominal payment by the Robinsons of not more than $100. The bill, in effect, provides for a gift from the United States to the Robinsons. We can find no basis for this type of charity.

If this special treatment is given to the Robinsons, these other occupants would feel entitled to get back what they paid and to have their terms extended to life estates without charge. We believe this bill sets a bad precedent. It places the Congress in the position of renegotiating the terms of a settlement fairly reached over 20 years ago; it overturns a transfer of property agreed to by all parties. We would note that there are many other such agreements mutually adhered to throughout the National Park System, and we see no reason for Congress to single out this one.

That concludes my prepared statement, Mr. Chairman. I would be happy to respond to any questions that you or other Members of the Committee may have.

Senator MELCHER. Thank you very much, Mr. Galvin. Were you there at the time?

Mr. GALVIN. No, sir, I was not.

Senator MELCHER. So, you're just in the same position I am.

And I've looked over this file very closely, including the file that is on hand through the Park Service. And I find your testimony on the top of page 3—"The Federal Government has consistently dealt fairly and openly with the Robinsons"—a little bit obnoxious because any review of the record on file, both from the attorney representing Mr. Robinson and your own files, clearly shows that the treatment given the Robinsons was unique, far different from everybody else, and on balance, objectively anyone would have to conclude, unfair.

Now, nevertheless we are in the business here of trying to correct a wrong. We are going to the great expense of holding a portion of this hearing this morning on this bill. We've had it printed in the record. It's in the process here, and to pass it is going to take more expense, far more than is necessary I might say. This has been brewing for 2 or 3 years. I've been in consultation with the Park Service I believe for a year. It has taken a lot of my time which is paid for out of the Federal Treasury. It has taken a lot of your time which is paid for out of the Federal Treasury, and it has taken a lot of time of Congress to start the process of this bill. So, it just boggles my mind why you go to all this trouble, all this expense, and all this unfairness concerning a couple of brothers.

You're aware of their age, as I am, are you not?

Mr. GALVIN. I'm generally aware, yes, Mr. Chairman.

Senator MELCHER. What is it?

Mr. GALVIN. I believe Con Robinson I've heard is over 70.

Senator MELCHER. Over 70. So, he has already lived his 3 score and 10.

Now, you say there are 14 reservations in Glacier National Park, 6 of which are for terms of years ending at various times between 1991 and the year 2002. If we picked one of the points in there, do you approve the bill then?

Mr. GALVIN. Pardon me?

Senator MELCHER. If we picked a year between 1991 and 2002, would that change your testimony?

Mr. GALVIN. I don't believe so, Mr. Chairman.

Senator MELCHER. All right. Then you said the owners paid fair value for those reservations. The bill says the Robinsons pay no more than $100, a nominal payment. What is fair value?

Mr. GALVIN. Normally with a reservation of use and occupancy, it is a reduction of 1 percent per year for the use and occupancy. So, for example, if a term of use and occupancy of 10 years was reserved, it would reduce the original purchase price by 10 percent. As an example of this particular purchase——

Senator MELCHER. What would that amount to?

Mr. GALVIN [continuing]. If the Robinsons had reserved use and occupancy for 10 years instead of a special use permit, they would have paid $8,250 for it, or 10 percent of the original agreed upon price.

Senator MELCHER. Let's see. The Park Service got 130 acres, one of the biggest purchases at that time, probably ever, of purchasing

out these private in-holdings. And by the way, this was a homestead. In purchasing out that 130 acres, the Robinsons asked for 3 acres. So, you're trying to tell me that if they reserve the use of 3 acres, it should be 10 percent. Is that right?

Mr. GALVIN. I said normally reservation of use and occupancy is 1 percent a year. Since use and occupancy was not negotiated in this instance, I don't know what it would have been.

Senator MELCHER. You've got these other seven life estates. What was fair market value or whatever you charged them on those seven?

Mr. GALVIN. Mr. Chairman, we had no problem with granting use and occupancy at the time we were negotiating this land transaction. We offered both a life estate and use and occupancy. Mrs. Rae and the Robinsons at various times in the negotiations turned it down.

Senator MELCHER. Is there anything in the record that ever showed that Mrs. Rae and the Robinsons were negotiating at the same time in Glacier with the National Park Service?

Mr. GALVIN. One of the problems here is you had a one-third subdivided property, and so at times some of the parties were taking different stances. And our files——

Senator MELCHER. And the file shows very clearly that they were not negotiating and the Park Service did not—did not—bother to get all three together at one time. And so, you were operating piecemeal. That's what your own record shows. And then the record clearly shows that, based on some conversation of subdividing, that you went into a procedure of foreclosure which is unique at Glacier.

Mr. GALVIN. I believe, Mr. Chairman, there was a 2-year period between the original suggestion of subdivision in the actual condemnation.

Senator MELCHER. Yes, I believe there was, indeed, a 2-year period where nothing is clear now in your files except the lack of any consistency in handling this. And the case begs a correction.

Now, can you answer me this? What is a fair value for life occupancy or some term of years?

Mr. GALVIN. I'd have to supply that answer for the record, Mr. Chairman.

Senator MELCHER. I know you would because you haven't been able to present it at any time I've discussed this with you or your boss. I'm telling you, Mr. Galvin, that this bothers me, that for some reason based on events that transpired 20 or 30 years ago, you don't want to treat these two brothers fairly. And I think that it is a bad blot on your boss' record year while he is here and yours too.

Now, what was the reason for the condemnation of the McCarthy homestead?

Mr. GALVIN. My reading of the file and our people's reading of the file indicates that the condemnation related to disagreement over price.

Senator MELCHER. And isn't it true, as you review those records, that there was different reason given by Nielsen working for the Park Service, for Nelson working for the Park Service, and for Lusk working for the Park Service?

Mr. GALVIN. I don't read it that way, Mr. Chairman.

Senator MELCHER. You don't.

Now, what evidence did the Park Service have that Mrs. Rae, who represented herself as spokesman for the family, was authorized to speak for the Robinsons, the two brothers who owned two-thirds?

Mr. GALVIN. The only evidence that exists is that all parties to the settlement agreed to it.

Senator MELCHER. After you went to condemnation, right?

Mr. GALVIN. That's correct.

Senator MELCHER. Yes, after you went to condemnation.

To your knowledge, Mr. Galvin, was there any other procedure like this in Glacier?

Mr. GALVIN. There have been other condemnations and declarations of taking.

Senator MELCHER. Like this one, though, where you never got all three owners of a piece of property in the room at the same time to say let's negotiate.

Mr. GALVIN. I don't know, Mr. Chairman.

Senator MELCHER. You don't know. As far as I can determine—if you don't know, I don't know how I can find it because I can't find it.

Did the Park Service officials follow their policy regarding the "opportunity" purchases in the Robinson case?

Mr. GALVIN. We made two offers based on appraisals that were unacceptable to the Raes and the Robinsons.

Senator MELCHER. When and how were the Robinsons, who were two-thirds owners—that's the brothers—offered life estate by the park?

Mr. GALVIN. I don't know that they were.

Senator MELCHER. Never is the correct answer.

I'm not going to bother any more with you, Mr. Galvin, or take up the time of listening to this, but we will submit the balance of these questions for the record, and we would like to have you answer them. Thank you very much.

Mr. GALVIN. Thank you, Mr. Chairman.

Senator MELCHER. Now, we will call on the attorney for the Robinsons, R. Stephen Browning, Browning, Kaleczyc, Berry & Hoven law firm in Helena, and Mr. Robinson. Steve, glad to have you both here.

Mr. BROWNING. I would like, if we could, Mr. Chairman, to have Mr. Robinson provide a very brief review of a chronology of what happened in this case.

Senator MELCHER. Please proceed, Mr. Robinson.

STATEMENT OF CONWELL ROBINSON, GREAT FALLS, MT, ACCOMPANIED BY R. STEPHEN BROWNING, BROWNING, KALECZYC, BERRY & HOVEN, P.C., HELENA, MT

Mr. ROBINSON. My name is Con Robinson. I am here today to testify for my brother and myself in our private relief bill, S. 1849. We live in Great Falls, Montana. We are lifelong residents of Montana. I am presenting my case to be able to use the property that was taken from us for the rest of our life.

I would like to review with you the chronology I have prepared on our case. I will touch on the highlights of the chronology. It is long. I will make it as brief and concise as I can.

To begin with, my maternal grandparents filed on the McCarthy homestead in 1908. The 130-acre tract was in Big Prairie, which 2 years later would be part of Glacier National Park.

I now would like to go to paragraph 6 of the chronology. On October 3, 1965, my mother died. Her two sons, my brother and I, became two-thirds owners. Mrs. Rae, my aunt, owned one-third interest.

Paragraph 7. On October 8, 1965, Mrs. Rae visited the assistant park superintendent and without our knowledge offered our property for sale to the park.

Paragraph 13. On December 20, 1965, without our knowledge, Mr. Nelson called Mrs. Rae and offered her $64,200 which she rejected immediately on the phone. I ask that you would look at attachment E to the chronology. This document in Mr. Nelson's own handwriting tells what then took place.

On December 21, the day following, Nelson stated that Mrs. Rae called him and said the other owners also refused. The other owners, the Robinsons, did not even know she had offered our property for sale. Later that same day Mr. Nelson and his superior, Keith Nielsen, superintendent of Glacier made the decision to recommend, justify and initiate condemnation.

Paragraph 17. On March 23, 1966, my brother and I approached the park and offered the McCarthy homestead for sale if the current owners could reserve life estates for 3 or 4 acres, including the buildings. We talked with Mr. Dan Nelson, assistant superintendent. He said he would come back with an offer, but he never informed us at that time that he had already initiated condemnation proceedings against us. He did not tell us that he had been talking with Mrs. Rae, our aunt, for 5 months before this.

Paragraph 21. On July 19, 1966, Mrs. Rae, our aunt, received an offer from the National Park Service for $71,500, but there was no provision for a life estate. The written offer stated that the property was "urgently needed for Park purposes." No similar offer was sent to us, my brother and I.

Paragraph 22. On August 12, 1966, we received an extension of the Park Service's July 19, 1966 offer. This was the first official notification by the Park Service that a second and final offer had been made to Mrs. Rae for our land.

Paragraph 23. On October 18, 1966, Superintendent Nielsen wrote to Mrs. Rae offering her a life estate. We were co-owners of the same property, but were not offered life estates.

Paragraph 24, 25 and 26 merely detail the park's justification for condemnation. They said we were going to subdivide. They offered no evidence. They had none.

Paragraph 27, September 14, 1967. We received the declaration of taking which we turned over to our attorneys. Our defense of the condemnation required work by three attorneys over a period of 2 years and an expenditure of approximately $6,000. It was very stressful for us during this period as we tried to arrive at some settlement that would allow us to retain use of our cabin. We were under extreme duress during this time.

Paragraph 30, October 12, 1967. The National Park Service director wrote concerning the possibility of a life estate for Mrs. Rae. No mention was made of life estates for us, my brother and I.

Paragraph 32. On September 4, 1968, our attorney wrote to the United States attorney asking that we be given life estates.

Paragraph 33. This is further evidence that the park only offered life estate to my aunt, but not to my brother and I.

Paragraph 34. On November 12, 1968, during the period when the National Park Service was unwilling to consider a life estate for us, Superintendent Nielsen wrote to all of the owners of property in Glacier Park, a letter which we were not sent, stating the policy of the Park Service with respect to acquisition.

Subparagraph A. Private owners will not be forced to sell their property to the Park Service. We were forced to sell.

B, Private owners desiring to sell to the Park Service will be allowed to retain life estates. My brother and I were not allowed to retain a life estate.

Subparagraph C. No condemnation of privately owned land except where the property is needed for development of public use facilities. After 21 years, no public use facilities are on the property.

Senator MELCHER. Con, I think I'm going to interrupt you here and suggest that the rest of this be put in the record.

Mr. ROBINSON. Fine.

Senator MELCHER. I believe that I have looked through all of your testimony, and I believe it makes a very valid case.

[The prepared statement of Mr. Browning follows:]

STATEMENT OF R. STEPHEN BROWNING ON BEHALF OF
CONWELL AND GERALD ROBINSON IN SUPPORT OF S. 1849
BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS
U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C.
MAY 20, 1988

Mr. Chairman and members of the Subcommittee, I am appearing before you today to present the case for the Robinson brothers, Con and Gerald, to be allowed to use their family property, "the McCarthy Homestead," in Glacier National Park.

Let me begin by saying that the Robinson brothers seek not pity, but justice. They, like any U.S. citizen, deserve compliance with federal policies. Once you review with the record in this case, you will likely agree that the Park Service treated the Robinson brothers not only unfairly and unkindly, but also in a manner entirely in contravention of existing federal policies.

It is important at the outset to clarify the legal basis for the Robinson brother's case. The property in question was taken in 1967 by the Park Service in a condemnation proceeding. The defendants, including the Robinson brothers, originally contested the "need" for the "taking", but were persuaded that further contest of the need issue would be fruitless and prohibitively expensive. Thus, only the question of the "value" of the property was contested, and that, too, proved to be essentially fruitless and prohibitively expensive to challenge, because of the Park Service's restrictions relating to appraisal.[1] Finally, throughout the entire legal condemnation proceeding the Robinson brothers requested life estates for themselves. In the end, their property was taken, though it was not "needed." Compensation was paid to them, though it was less than fair, and they had no practical, cost effective manner to challenge the fairness of the compensation. Finally, they were denied use of their property for life, though they requested and deserved it. While they continued to use their property pursuant to a series of special use permits, that right was denied to them permanently in 1984.

The Robinson brothers problems began when the Park Service chose not to deal directly with them, but instead negotiated with their aunt, a minority owner of the subject property. Indeed, as incredible as it might seem, the Park Service moved to condemn the Robinson brothers property without first contacting them, without negotiating with them, and without having any legal basis for initiating condemnation.

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[1] For additional insights on value, please see the attached affidavit of Mr. Dale McGarvey, dated May 16, 1988.

As you review the record in this case, you will see that the United States Government, in effect, "trapped" the Robinson brothers into condemnation. Here are the essential elements. Park Service officials encouraged inholders to come to the Park Service and to offer their land for sale at fair prices. Park Service officials stated not only that the United States would pay fair prices, but that the United States would allow these inholders to retain life estates.[2] Yet, in this particular case when a minority owner came forward to sell the property of the Robinson brothers, Park Service officials moved to condemn their property when the joint owners decided that the price offered by the Park Service was too low.

A careful review of the record suggests at least two theories as to why the Robinson brothers were trapped: Perhaps the Park Service "misunderstood" at every juncture what was actually happening. I call that the "misperception" theory, and in light of the attached evidence, it may be a charitable interpretation of Park Service action. The second possible theory is that Assistant Park Superintendent, Dan Nelson, for reasons that he alone knows, chose to wield the power of the United States maliciously because either he did not like the families who occupied the McCarthy Homestead or he wanted the McCarthy land for the United States Government, or both. I call that the "vengeance" theory. The vengeance theory is largely supported by Mr. Nelson's own personal records which are enclosed following the chronology as attachments E and 2L.

For the purposes of S. 1849, the misperception theory should suffice. Under this theory, the Park Service simply misperceived the essential facts; failed to appreciate the extent of its own officially stated policies; and misunderstood what steps it should have taken to carry out its policies. The facts highlighted in the attached chronology support both the misperception theory and the vengeance theory, and these facts are more than adequate to provide a firm foundation upon which the United States Congress can base Senator Melcher's legislation to rectify the actions taken against Mr. Robinson and his brother. The essential elements of the misperception theory are as follows:

1. Park Service officials "mistakenly" believed that they were dealing with the owners of the McCarthy Homestead when they negotiated only with the Robinson brother's aunt, Isabelle Rae, in 1965.

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[2] For a brief summary of the Park Services' policy on inholder acquisition at that time, please see attachment V to the chronology.

2. Park Service officials "mistakenly" surmised that the owners of the McCarthy Homestead intended to subdivide or otherwise "abuse" their property, despite the fact that there is no probative evidence that any such acts were seriously proposed by the owners.

3. Park Service officials "misunderstood" that they failed to offer life estates to the Robinson brothers, despite the fact that the Robinsons were 2/3 owners of the property at the time the initial condemnation decision was made.

4. Park Service officials "misunderstood" that they did not need -- urgently or otherwise -- the property that composed the McCarthy Homestead.

5. Park Service officials were "mistaken" in their belief that they were treating the Robinson brothers fairly when they refused to give them life estates in the property and when they moved to condemn the property after the Robinsons refused to accept the NPS price for the land that the Robinsons regarded to be less than half of the value of the entire parcel.

6. Finally, Park Service officials "misunderstood" that they were failing to follow their own policies in the manner by which the property was acquired from the owners of the McCarthy Homestead.

The Park Service has enormous power, and that power was exercised in this case to remove from Park boundaries two direct descendants of a homesteader who had earned property from the U.S. Government prior to the creation of Glacier National Park. In a word, the Park Service intimidated the Robinson brothers, McCarthy's descendants, by initiating an expensive court proceeding which caused considerable duress as well as substantial legal expenses for them.

Throughout this entire process, there was a systematic failure by the Park Service to deal with all the owners of the McCarthy Homestead. The Robinson brothers continually requested to be given use of their land for their life. Yet, without having any valid written power of attorney from Mrs. Rae signed by the Robinson brothers, the Park Service chose to deal completely with a minority owner who neither spoke for nor had control over the majority owners of the property.

The owners of the McCarthy Homestead had a basic property right in their property. That right was recognized in the enabling legislation for Glacier National Park, and it was memorialized in the deed provided to Mr. Robinson's grandmother signed by Woodrow Wilson in 1915.

Park Service officials have also shown disregard for the historical character of the McCarthy Homestead. The current Superintendent of the Park wants the McCarthy Homestead to "melt into landscape", despite the fact that the property contains the last original and occupiable homestead cabin in the Park. It has been so recognized by the Department of Interior when it was placed on the national historic register in December 1986.

In its condemnation action, initiated in September 1967, the Park Service stated that it "urgently needed" the land. The following year in a letter to all inholders, the Park Superintendent stated that no property would be taken by condemnation unless "public facilities" were "needed" by the Park Service. Yet, more than twenty years after receipt of the condemnation notice, no public facility has been developed or planned for the McCarthy Homestead. Further, private dwellings continue to be occupied in the Big Prairie area in which the McCarthy Homestead is located.

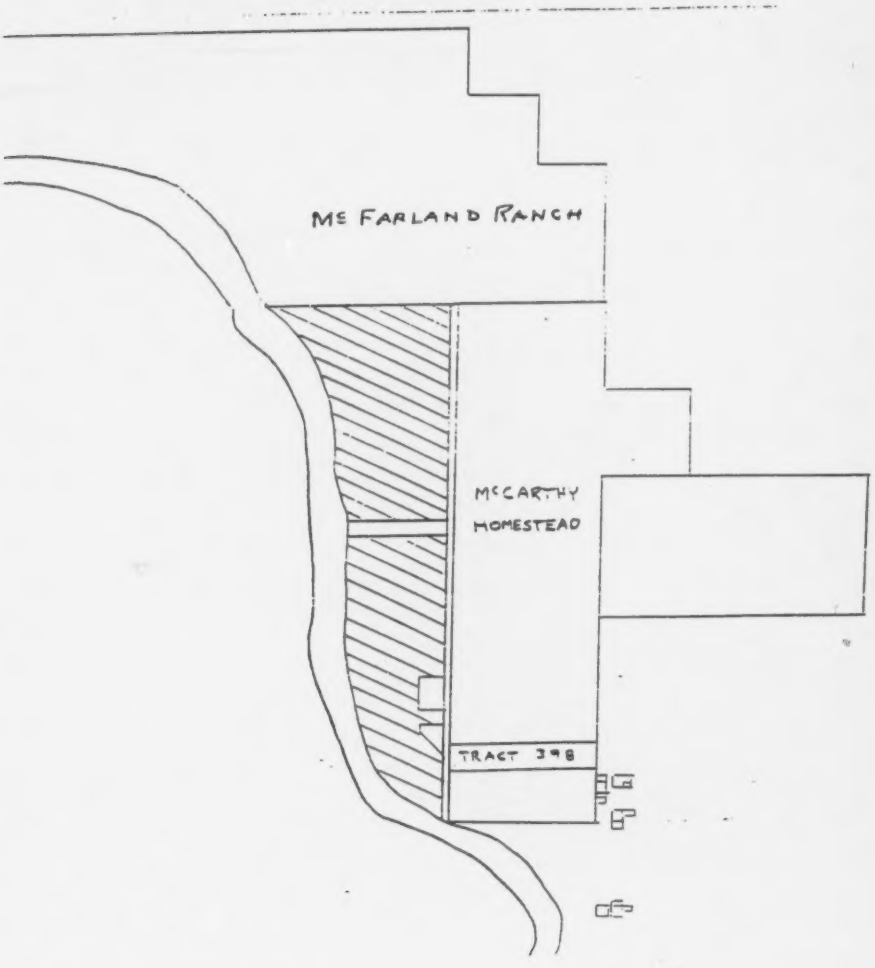
Mr. Con Robinson first came to my office on October 19, 1983 to express his desire to have renewed for the third time the special use permit that he and his brother had been issued by the Park Service in 1979. That permit was scheduled to expire the following summer. For the next 4 1/2 years I have labored on behalf of Mr. Robinson to allow him the continued use of his property. He is now 70 years old. If he were allowed to use his property for the remainder of his life, the Park Service would not be denied use of property that it "needs" at this time. Such an action would not only be humanitarian, it would serve to correct the abuse of government power that has been exercised against Mr. Robinson and his brother. In light of the above, I would urge that you take all steps immediately to seek enactment of S. 1849.

In closing, I must emphasize that Park Service officials have denied fair and legal treatment of Mr. Robinson, apparently because they do not want to set a "precedent" for other inholders. This in itself is a bad precedent, because the United States Government should always seek to rectify illegal acts such as those it took against Mr. Robinson. To the extent that the Park Service has treated other inholders illegally, improperly, and/or unfairly, the Park Service should rectify such treatment. If the Park Service does not see fit to correct the problems of the Robinson brothers, then certainly Congress should.

Should you have any questions about anything contained in this testimony or the attached documents, Mr. Robinson and I are willing to answer.

Finally, I am acutely concerned about the potential for delay by the 100th Congress in dealing with this legislation. Personally, I think the Park Service has the authority to deal with this matter immediately in an administrative fashion. Since it has chosen not to do so, I would urge you to press immediately for immediate passage of this legislation. Thank you.

Reference page 37 of 1985 Land Protection Plan, Glacier National Park. Big Prairie area.



CHRONOLOGY OF CONDEMNATION OF THE MCCARTHY HOMESTEAD IN GLACIER PARK

This is an account of the events leading up to the condemnation of the McCarthy Homestead which has resulted in the introduction of Private Relief Bill S. 1849 by Senator John Melcher. The documentation for each point of this chronology is attached. The letters in parenthesis correspond to the attachments.

1. Jeremiah and Margaret McCarthy, Con and Gerald Robinson's maternal grandparents, filed on the McCarthy homestead in 1908. The 130 acre tract was located in Big Prairie, an area that two years later would become Glacier National Park. (A)

2. In 1909 Jeremiah McCarthy passed away. Margaret McCarthy ultimately "proved up," and the property was deeded to her on April 23, 1915 by President Woodrow Wilson. (B)

3. May 11, 1910, enactment of law creating Glacier National Park, which includes the provision that "nothing herein shall affect any valid existing claim, location or entry existing under the laws of the United States or the rights of any such claimant, locator or entryman to the full use and enjoyment of his land." 16 U.S.C. § 161. (C)

4. In 1940 Grandmother Margaret McCarthy passed away and ownership passed to her children: Anna L. Robinson my (Con Robinson's mother); Dan McCarthy, her brother; and Isabelle McCarthy (later Rae), her sister. At the beginning of 1964 the owners were the same. (D)

5. On June 30, 1964 Con Robinson and his brother, Gerald, purchased their uncle's (Dan McCarthy's) one-third interest.

6. In October 1965 Anna Robinson died, and her two sons (Con and Gerald) became two-thirds owners, with Mrs. Rae owning a one-third interest.

7. On October 8, 1965, Mrs. Rae visited Assistant Park Superintendent, Dan Nelson, and without Con and Gerald's knowledge, offered our property for sale to the Park. At that time she owned one-third interest and the Robinson brothers owned two-thirds interest. (E)

8. On October 11, 1965, without the Robinson brothers knowledge, Mr. Nelson referred the offer to his superiors. (E)

9. On October 18, 1965, without the Robinson brothers knowledge, Mr. Nelson received authority to appraise. (E)

10. On October 19, 1965, without the Robinson brothers knowledge, Mr. Nelson went with appraiser to the property. (E)

11. On October 26, 1965, without the Robinson brothers knowledge, Mr. Nelson, sent a reprogramming proposal to the Director of the National Park Service, placing the property on their list of inholdings that were on high priority for acquisition. In the reprogramming request, the Park Service states "the owners prefer the government as the purchaser so area can be protected from commercial enterprises to spoil the wilderness." (F)

12. On December 15, 1965, without the Robinson brothers knowledge, Mr. Nelson received the Park's appraisal report for $64,500.

13. On December 20, 1965, without the Robinson brothers knowledge, Mr. Nelson deducted the cost of appraisal ($300) and called Mrs. Rae and offered her $64,200, which she rejected immediately on the phone. (E)

14. On December 21, 1965, the day following, Nelson stated that Mrs. Rae called him and said the other owners also refused. (The other owners, the Robinson brothers, did not even know she had offered the property for sale.) Later that same day, on December 21, Nelson and his superior, Keith Neilson, made the decision to recommend, justify and initiate condemnation. (G)

15. On January 4, 1966, without the Robinson brothers knowledge, Nelson wrote a formal memo recommending condemnation. (E)

16. On January 6, 1966, without the Robinson brothers knowledge, Nelson sent memo recommending condemnation with appraisal to regional office of NPS. (H)

17. On March 23, 1966, the Robinson brothers, with Mrs. Rae's approval, approached the Park and offered the McCarthy homestead for sale if the current owners could reserve life estates for three or four acres including the buildings. The Robinsons talked with Mr. Dan Nelson, Assistant Superintendent. He said he would come back with an offer, but he never informed the Robinsons that he had already initiated condemnation proceedings against them. (E)

18. May 1966 - Mr. Dan Nelson made an informal unwritten offer to the Robinson brothers by telephone in the amount of $65,000, but there was no offer of life estates. The Robinsons subsequently refused the offer.

19. June 15, 1966 - Superintendent Nielsen wrote to NPS headquarters stating that the owners did not prefer to subdivide this property. (I)

20. On July 9, 1966, the Robinson brothers deeded back one-third interest to Dan McCarthy.

21. On July 19, 1966, Mrs. Rae received an offer from NPS for $71,500 but there was no provision for a life estate. The written offer stated that the property was "urgently needed for Park purposes." No similar offer was sent to the Robinson brothers. (J)

22. August 12, 1966 - The Robinson brothers received an extension of NPS's July 19, 1966 offer. This was the first official notification to the Robinsons by NPS that a second and final offer had been made to Mrs. Rae for the McCarthy Homestead. (K)

23. October 18, 1966, Superintendent Nielsen wrote to Mrs. Rae offering her a life estate. The Robinsons were co-owners of the same property, but were not offered life estates. (L)

24. November 8, 1966, Mr. Dan Nelson wrote a memo to Superintendent Nielsen justifying condemnation. Without offering any documentary evidence of subdivision intent by all of the owners, Nelson asserts that "they could subdivide the land." At the end of his report Nelson stated that the Park Service should not "back down on [this] . . . acquisition" as it "would be a great injustice to everyone." (M)

25. December 27, 1966 - The Director of NPS is reported to have decided not to proceed with the condemnation of the McCarthy Homestead. (N)

26. January 9, 1967, Superintendent Nielsen wrote the Director of NPS arguing in favor of condemnation but also noted, in effect, that the McCarthy homestead was not suitable for subdivision because it would not be attractive property for subdivision purchasers. (O)

27. September 14, 1967, the Robinsons received the "declaration of taking," which was turned over to their attorneys. Their defense of the condemnation required work by three attorneys over a period of two years, and an expenditure of approximately $6,000. It was stressful for the Robinson brothers during this period, as they tried to arrive at a settlement that would allow them to retain some use of their cabin, hopefully for their natural lives. The Robinsons were under extreme duress during this time.

28. September 29, 1967 - Mrs. Rae was written a letter by Senator Metcalf including a letter of September 28, 1967 from NPS to Senator Metcalf discussing a life estate or a special use permit for Mrs. Rae. The NPS letter also says that "the Robinsons were offered the right to remain on the property after it had been sold to the government." Mrs. Rae never told Con or Gerald Robinson this; neither did the NPS; Con Robinson received this letter one year after her death in the spring of 1983, when he obtained her files from her attorney in August 1984. (P)

29. October 4, 1967 - Mrs. Rae wrote to Senator Metcalf stating that "there was never a definite offer made to us . . . on the right to remain on the property after the sale to the government." (Q)

30. October 12, 1967 - Memo and attachments for the Director of NPS concerning the possibility of a life estate for Mrs. Rae. No mention of life estates for either of the Robinson brothers. (R)

31. October 31, 1967, through their attorneys, the Robinsons filed an answer to the Government's Condemnation Petition wherein they stated that the Park Service was acting "in bad faith" and that the property was not "needed or necessary" by the Park Service. (S)

32. On September 4, 1968 the attorney for the Robinson brothers, Alex Blewett, Jr., wrote to the United States Attorney, Robert O'Leary, asking that the Robinson brothers be given life estates. (T)

33. September 30 - October 7, 1968 - Several enclosures document the unwillingness of Mr. Nelson to consider the possibility of NPS to provide life estates to the Robinson brothers in response to their repeated requests. Significantly, Superintendent Nielsen in his memo of September 30, 1968, noted that a life estate was offered only to Mrs. Rae -- "not to young Robinson brothers." Further, the attorney for the Robinsons, in describing

Mr. Nelson's response to the repeated requests for life estates for the Robinsons, made the following observation: "HE IS strictly a regulation man and said initially that they could not consider any kind of a revestment of any estate and could only consider a yearly use permit renewable for a maximum of three years after the case was settled." (U)

34. On November 12, 1968, during the period when NPS was unwilling to consider a life estate for the Robinson brothers, Superintendent Neilson wrote to all of the owners of property in Glacier Park a letter (which the Robinson brothers were not sent) stating the policy of the Park Service with respect to land acquisition. (V) This policy articulates the basic principles that the Park Service has always purported to follow in acquiring land owned by private inholders. Chief among these principles are:

    a. Private owners will not be forced to sell their land to the Park Service;

    b. Private owners desiring to sell to the Park Service will be allowed to retain life estates;

    c. No condemnation of privately owned land except where the property is "needed" for development of public use facilities or where the owners propose to change the use of their property in a manner that is incompatible with the purposes for which the Park was established.

35. Contrary to this stated policy, the McCarthy homestead was not needed for a public facility; the Robinsons did not propose to change the use of their property in a manner that was incompatible with the purposes of the Park; the Park Service never offered them life estates; and, despite the documented fact that the Robinson brothers repeatedly requested life estates; they were not granted life estates.

36. The United States refused the Robinson brothers request for life estates, and because of lack of funds to continue to litigate this case, the Robinsons ultimately acceded to a ten year use permit. This settlement was proposed by the Park on May 27, 1969. (W) One use permit was for July 1, 1969 to July 1, 1974. The second for July 1, 1974 to July 1, 1979. (2A)

37. May 18, 1970 - Judge Smith issued the final order fixing compensation for the condemnation. (2B)

38. During the ten years of the first two special use permits (1969-1979), the Robinsons acquired information that led them to believe that they had been treated unfairly and illegally and asked NPS for a renewal of the permit. NPS refused. Mrs. Rae then contacted an attorney and the Robinsons were shortly given a third 5 year use permit from July 15, 1979 to July 14, 1984. (2C)

39. June 22, 1984 - During negotiations with various officials of the National Park Service and Glacier National Park, it was suggested that a possible solution for the Robinsons might be arranged if their cabin was of historical significance. The Assistant Superintendent at the time initiated action to place the cabin on the Historical Register. (2D)

40. August 1984 - Upon reviewing Mrs. Rae's files, which had not previously been disclosed to them, the Robinsons became convinced that the Park Service had violated its policies.

41. March 5, 1985 - NPS approved "Land Protection Plan" for Glacier National Park. This plan restated the policies in place when the McCarthy Homestead was taken by NPS in 1967. With respect to the life estate issue, the Plan stated:

> Life or Term Estates.
>
> The owner may sell developed property to the National Park Service and retain the right to use and occupy the property for a fixed term not to exceed 25 years or for the lives of the owner and present spouse.

Similarly, the condemnation procedures restated the earlier policies.

> Condemnation
>
> Condemnation would be regarded as a last resort by the National Park Service. Condemnations initiated by the filing of a complaint are used in most eminent domain situations. Title to the land does not pass to the government until a court or jury has determined just compensation and this amount has been paid to the owner. Condemnation may also be used by the Service to determine title issues or when an owner willingly agrees to sell to the Federal government but wants the court to determine the value of the property.

The Congress has also provided for the use of a declaration of taking which vests property in the United States immediately upon filing papers in the court and the deposit of an estimate of just compensation.

42. In April 1986, when Mr. Gilbert Lusk assumed office as Superintendent, Mr. Browning wrote to him and asked if Mr. Robinson could meet with him on this matter. Mr. Lusk declined to talk with the Robinson's attorney. (2E)

43. On July 8, 1986, Senator Max Baucus wrote a letter to Mr. Lusk on the Robinsons' behalf as constituents, asking consideration of the case. Senator Baucus had previously acted in support of the appeal by the Robinson brothers.

44. On July 22, 1986, Mr. Lusk replied to Senator Baucus' letter. Lusk stated, among many other things, that the purpose of the condemnation was to allow the structures to "melt into the landscape". He said that he intended to pursue that policy despite the fact that the cabin was still under consideration for inclusion in the National Historical Register. Mr. Lusk also stated that he had no intention of including the cabin in their historical leasing program, in spite of the fact that his predecessor initiated action to do so. (2F)

45. On September 15, 1986 Susan Recce, acting Assistant Secretary of Fish, Wildlife and Parks, wrote to Congressman Marlenee stating that "the only alternative would be special legislation authorizing a life estate to Mr. Robinson." (2G)

46. On December 26, 1986, the cabin was placed on the National Historic Register. It is the only occupiable original homestead cabin located in Glacier National Park. (2H)

47. On July 8, 1987, Mr. Con Robinson received a letter from Mr. Lusk requiring removal of all personal belongings from the cabin by September 9, 1987, and to deliver the key to Park Headquarters. He also stated that all belongings remaining would become property of the U.S. government and would be disposed of. (2I)

48. On October 29, 1987, Con Robinson received another letter from Mr. Lusk stating that the belongings would be inventoried and government locks put on the buildings and gave Mr. Robinson 15 days to remove them. If not they will become government property and will be disposed of. (2J)

49. On November 5, 1987, Senator John Melcher introduced S. 1849 for the private relief of Con and Gerald Robinson.

50. On November 24, 1987, Mr. Lusk wrote a letter to Senator Melcher vigorously opposing S. 1849. (2K)

51. On January 7, 1988, Mr. Dan Nelson wrote a letter to Senator Melcher opposing the bill. Mr. Nelson stated that he initiated condemnation because the Robinson's threatened subdivision of their property on March 23, 1966. This chronology presents positive evidence that Mr. Nelson recommended initiation of condemnation proceedings four months before the Robinsons first talked with him. (2L)

52. April 22, 1988 - Denis Galvin, Deputy Director NPS, wrote to Senator Melcher answering certain questions asked by Senator Melcher and enclosing several documents including an NPS chronology and a list of 14 properties in Glacier Park for which there are either outstanding life estates (8 properties) or tenancy terms (the shortest being for 19 years and the longest 25 years). (2M) Significantly, the Park Service appears to have followed its Land Protection policies in all 14 of these property acquisitions.

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Dale L. McGarvey
Jon L. Heberling
Roger M. Sullivan
Allen M. McGarvey

May 16, 1988

Mr. R. Stephen Browning
28 N. Last Chance Gulch
P.O. Box 1697
Helena, MT 59624

Re: Private Relief Legislation for Con Robinson

Dear Mr. Browning:

Enclosed please find my Affidavit, setting out my knowledge of the onset of the Glacier Park land use restrictions and the impact of the restrictions on the landowners.

Hope this will be of assistance.

Sincerely yours,

Dale L. McGarvey

DLM:dso
Enclosure (Affidavit)

RECEIVED

MAY 17 1988

BROWNING, KALEC[illegible]YC,
BERRY & HOVE[illegible]C

AFFIDAVIT OF DALE L. McGARVEY

STATE OF MONTANA)
: ss.
County of Flathead)

DALE L. McGARVEY, being first duly sworn, deposes and says:

That my address is 745 South Main, Kalispell, Montana. My profession is an attorney; I have been an attorney since 1951 and have been regularly licensed as an attorney by the State of Montana. I have practiced before the State and Federal courts.

I obtained the degree of L.L.B., Bachelor of Law, in 1951 from the University of Montana Law School and I obtained the degree of L.L.M., Masters of Law, from Harvard in 1952.

The emphasis of my practice has been damages and, to a large part, handling condemnation cases. I have taken several courses sponsored by the American Institute of Real Estate Appraisers and am familiar with the law governing the evidence of value in both State and Federal court.

I am familiar with the Con Robinson property in Glacier National Park.

I am a landowner in Glacier National Park.

I handled the negotiation on behalf of the landowners when the Park acquired the greater portion of the Charles F. W. Schoenberger property across the road from the Robinson property in Glacier National Park.

During the 1950's Glacier National Park acquired by

negotiation a series of tracts, all on a willing-seller, willing-buyer value basis. That is to say, during that period of time the Park did not interfere with fair market sales in Glacier National Park. Over the years, however, this policy changed.

In the early 1960's the Park came out with a policy of applying land use restrictions to the private ownerships in Glacier National Park.

Since value is directly related to land use, the effect of these land use restrictions was first to depress the value of the remaining land taken in Glacier National Park.

The first land use restrictions that were adopted by Glacier National Park were rather vague; however, the impression was given to all that would listen that if the landowner did something that the Park felt was not compatible with their ideas, that the landowner's land would be condemned.

In the Duncan case the Park did condemn the landowner's land simply because he wanted to improve it with a recreational home.

The impact of all these land use restrictions from the early 1960's forward was to deprive the landowner of any way to prove the fair market value of his land if it was condemned.

In a condemnation case the burden of proof is on the landowner and if he does not have the wherewithal, namely

sales at arms length in the close economic neighborhood, he isn't able to prove his case at all.

The activities of the administration of Glacier National Park from the early 1960's forward has created a situation wherein they are able to confiscate the landowner's land at the price they want to set.

The announcement and publication of the land use restrictions was systematic, deliberate, and had the effect of preventing the landowner from having any basis for proving his value.

This is not a simple case where a condemnation action was filed and the result obtained by settlement. The result in the Robinson case was secured by the inevitable coercion created by the Glacier Park administration placing land use limitations upon the land.

The effect of these land use limitations prevented the development and use of the land, in my opinion, contrary to the Act creating Glacier National Park. The Glacier Park landowners at that time, their descendants and assignees, were to be protected. The effect of the acts of the Park administration is to create a situation where there are no fair market sales because of the land use restrictions.

In my opinion these land use restrictions are void, but I would have to advise any seller of land in Glacier National Park to advise any prospective buyer that if the buyer starts to make use of the property, such as building a recreational

homesite on the land, it would in all probability be condemned by Glacier National Park.

I am a landowner across from the Con Robinson tract in Glacier National Park. I cannot develop my land because of the land use limitations. I cannot sell my land because I would have to advise any buyer that in all probability that if they bought and started to use the land by developing a homesite, it would be immediately condemned.

The effect of the systematic destruction of the market in Glacier National Park has destroyed all of the ability of the landowner to enter into fair negotiations. The Park essentially has it all its own way.

This situation has resulted in a great deal of hardship to all Glacier Park landholders, of particularly bare land, and has caused a great deal of hardship to the Robinsons as well.

Congressional oversite of the activities of the administration in Glacier National Park is sorely needed. Efforts should be undertaken to restore the basis for fair dealing that existed prior to the imposition of the land use restrictions.

In the meantime, the landowners should be given relief by virtue of a Private Relief Bill.

Further Affiant sayeth naught.

DATED this 16th day of May, 1988.

DALE L. McGARVEY

SUBSCRIBED and SWORN to before me this 16th day of May, 1988.

Notary Public for the State of Montana
(SEAL) Residing at Kalispell, Montana
My commission expires: 6-6-90

Senator MELCHER. Senator Domenici.

Senator DOMENICI. Mr. Chairman, I appreciate your asking that the remainder of the testimony be made a part of the record. I want to assure the witnesses that, from my standpoint, I have reviewed the situation and in due course, with Senator Melcher asking the leadership of this committee, we ought to be able to come up with something fair. And I just want you to know that even though we're not going to hear the rest of your testimony——

Mr. ROBINSON. I appreciate it.

Senator Domenici. I'm clearly of the opinion that we ought not continue this dispute when it seems to me to be rather easily resolved and that no one is going to be seriously damaged with the resolution that you are seeking. And I thank you very much for all the trouble you and your attorney have gone through to come to the committee.

Thank you very much, Mr. Chairman.

Mr. ROBINSON. I thank all of you for your consideration.

Senator MELCHER. Thank you both very much.

And I will make the statement of my colleague, Senator Max Baucus, a part of the record prior to the statement of Mr. Galvin.

Thank you both very much.

Now our next witness will be Mr. James Parker, Assistant Director for Support Services, Bureau of Land Management, Department of the Interior, and we will consider S. 1461.

Senator HECHT. May I make a statement, Mr. Chairman?

Senator DOMENICI [presiding]. Please proceed.

STATEMENT OF HON. CHIC HECHT, U.S. SENATOR FROM NEVADA

Senator HECHT. Mr. Chairman, I have a full statement which I am submitting for the record. However, I would like to clarify that this legislation, S. 1461, is designed solely to release a reverter in favor of the lands although it is drafted more broadly.

The YMCA already owns the land which it acquired under the Recreation and Public Purposes Act. I felt that the broader wording of the bill would act as an insurance in the future that there is no cloud on the title held by the YMCA, but I would have no objections to alternative wording which would accomplish the same objective.

Mr. Chairman, I go into great detail in my prepared statement which, in the essence of time and our future votes this morning, I will submit for the record.

Senator DOMENICI. It will be made a part of the record.

[The prepared statement of Senator Hecht follows:]

STATEMENT OF SENATOR HECHT
BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS
COMMITTEE ON ENERGY AND NATURAL RESOURCES

MAY 20, 1988

Mr. Chairman, I thank you for scheduling this hearing on S. 1461, a bill I introduced to clear title to certain lands the Las Vegas YMCA acquired in 1969 from the Bureau of Land Management under the Recreation and Public Purposes Act (R & PPA).

As you know, the bill, as drafted, would convey this land to the Las Vegas "Y." I would like to clarify that this legislation is really intended to release a reverter in favor of the land. The land has already been conveyed to the YMCA under the authority of the R & PPA. There is no need to convey it again. However, land conveyed under the Act which is not used for recreation and public purposes reverts back to the federal government. The Las Vegas "Y" would like to sell a portion of the land and use the proceeds to retire part of its debt and build a branch facility in Henderson.

I would argue that this sale will promote increased recreational opportunities for Southern Nevadans, is clearly in the public interest and therefore fulfills the spirit of the law. However, I recognize that the letter of the law also must be observed. This bill would exempt the land from reverting back to the federal government. While I favor the broader wording of the bill because I feel it will insure in the future that there is no cloud on the title held by the YMCA, I would have no objection to alternative wording which would accomplish the same objective.

Having said that, I would like to persuade this Subcommittee that granting the YMCA clear title to the land, so it is free to sell a portion of the land, will serve the purpose for which the land was originally conveyed to the YMCA under the R & PPA. The objectives of the original 1969 transfer from the BLM was to enable the Las Vegas YMCA to expand its public services to the Henderson community. However, the YMCA's current debt of about $700,000 threatens its future, and prevents it from using all 40 acres for recreation opportunities and public services for the Henderson community.

The community response to the YMCA's financial plight has been overwhelmingly encouraging and clearly demonstrates how much the

community values the YMCA's services. In the last three years, businesses, individuals and local government have joined together in a tremendous show of support to erase three million dollars of a bank debt that had reached nearly $3.8 million! Clearly, the Southern Nevada community has done everything in its power to save the YMCA. If this legislation is passed, the YMCA will sell about 30 acres of the land and use the remaining 10 acres for a Henderson branch facility. The proceeds of the land sale will be used to retire the remaining debt, which will assure the solvency of the YMCA's existing operations, and to finance the building of the branch facility. Thus, the objectives of the original conveyance under the R & PPA will have finally been fulfilled.

Currently, there is only one YMCA facility serving all of Southern Nevada, a community of over a half-million people. By contrast, the Reno community in Northern Nevada, with less than half the population, has three facilities. In 1987 alone, class enrollment increased 20%, and total membership reached almost 16,000. Further, the Henderson community is not proximate to the Las Vegas facility. To serve the Henderson community properly, and as intended by the original conveyance, expansion is necessary.

This legislation has the full support of the City of Henderson and Clark County. I am sure that local government recognizes that if the Las Vegas YMCA had to curtail or eliminate its programs and services, they would be obliged to replace those services, which over the past three years totalled over $2.8 million.

Again, I want to thank you, Mr. Chairman, and the members of the Subcommittee for scheduling this hearing. I urge my colleagues to look favorably on this legislation which is so important to the people of Southern Nevada.

Senator DOMENICI. Would you like to summarize your testimony? Your statement will be made a part of the record.

STATEMENT OF JAMES PARKER, ASSISTANT DIRECTOR, SUPPORT SERVICES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 1461

Mr. PARKER. Thank you, Mr. Chairman, I'll be happy to do that.

The administration must oppose enactment of S. 1461 because we believe it would result in a sizable Federal subsidy in excess of $1 million to the YMCA.

The 40 acres of land described in the bill were conveyed to the YMCA in 1969 under the Recreation and Public Purposes Act at a cost of $2,525. That was done under two separate patents. Both patents contain the normal reversionary clause which we put in all R&PP actions. The current market value of the land is in excess of $1 million. The land has not been developed by the YMCA.

We understand that the reason for the introduction of this bill, as Senator Hecht indicated, was to permit the YMCA, which has filed for bankruptcy, to sell the land and pay some of its debts as part of the bankruptcy proceedings. We believe that this is inappropriate under the Recreation and Public Purposes Act, and would set a very unwise precedent for the thousands of other R&PP patents that are out there. In other instances where there is no development, and apparently will be no development, the patentees normally reconvey the land to the United States.

There are, if the Congress should decide to proceed with this bill, some concerns in the way the bill is drafted. There are two preexistent rights-of-way across the parcel of land. The bill makes no provision for protecting these valid existing rights.

Also, there are some technical problems with the wording of the bill with regard to the conveyance. Since the land has already been patented, it is unclear exactly what is to be conveyed. Just the reversionary interest of the United States?

There is also a question regarding the minerals and whether they are going to remain reserved to the United States.

That would conclude my statement.

[The prepared statement of Mr. Parker on S. 1461 follows:]

MAY 20 1988

STATEMENT OF JAMES PARKER, ASSISTANT DIRECTOR, SUPPORT SERVICES, BUREAU OF LAND MANAGEMENT, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND FOREST, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ON S. 1461, A BILL "TO CONVEY CERTAIN LANDS TO THE YMCA OF LAS VEGAS, NEVADA".

I appreciate the opportunity to appear here today to discuss S. 1461.

S. 1461 would convey, without consideration, to the Young Men's Christian Association (YMCA) of Las Vegas, Nevada, forty acres of land described in the bill.

We oppose enactment of S. 1461. The bill would create a Federal subsidy in excess of $1 million to a nonprofit entity, with the resulting loss to the U.S. Treasury. No benefit enures to the United States.

The 40 acres of land described in S. 1461 were conveyed to the YMCA under the Recreation and Public Purposes Act in two patents, both of which contained the standard reversionary clause in favor of the United States. The transfer price for the entire 40-acre tract was $2,525.00. Private land in the neighborhood of the 40-acre parcel is rapidly being developed now for multifamily housing. A preliminary estimate of the current market value of the land is in excess of $1 million. This estimate is based on the sale of two similar 40-acre parcels of land within one-half mile of the subject land in late 1984. Those two parcels sold for $26,000 and $29,500 per acre.

The land has not been developed by the YMCA. On February 11, 1983, the YMCA filed a petition in bankruptcy. We understand that the reason S. 1461 was introduced is to permit the YMCA to sell the land and pay some of its debts as a part of the bankruptcy proceedings. We believe this is completely inappropriate. In other instances when it became apparent that development would not occur, the patentees have reconveyed the land to the United States for nondevelopment. We believe this would be the appropriate procedure for the YMCA to follow.

Additionally, two preexisting rights-of-way cross this parcel of land. One is to Clark County Sanitation District for pipeline purposes; the other is to the Nevada Power Company for transmission lines. S. 1461 makes no provision for protecting these valid existing rights for public utility purposes.

In addition to our objection to the bill conceptually, we find the bill itself to be confusing and inadequate. The lands have already been patented. The United States has only a reversionary interest. Yet S. 1461 would require the United States to convey the land to the YMCA. It is not clear whether it is intended to reconvey the land, to convey only the reversionary interest or to do something more. The bill does not address whatever mineral values may be on the land. Minerals were required by law to be reserved to the United States when the land was patented. At a minimum, the bill should indicate that minerals would not be conveyed by this bill.

This concludes my statement. I will be pleased to respond to questions.

Senator DOMENICI. Thank you very much.

Please proceed, Senator Hecht.

Senator HECHT. In my statement, which I have for the record, I am just going to take one paragraph out to address what you brought up.

I would argue that this sale will promote increased recreational opportunities for southern Nevadans. It is clearly in the public interest and, therefore, fulfills the spirit of the law. However, I recognize that the letter of the law also must be observed. This bill would exempt the land from reverting back to the Federal Government. While I favor the broader wording of the bill because I feel it will insure in the future that there is no cloud on the title held by the YMCA, I would have no objection to alternative wording which would accomplish the same objective.

Now, the basic objective is to provide recreational facilities for Henderson, and this financial problem must be addressed so these recreational facilities can be provided. And to all of you who are not familiar with southern Nevada, Henderson and Las Vegas are approximately 10 to 12 miles apart.

Senator DOMENICI. Thank you very much, Senator Hecht.

Did you have anything further to add with reference to the observations of the Senator?

Mr. PARKER. We recognize that the YMCA is having financial difficulties and probably could never develop that land. However, another R&PP could be issued to the City of Henderson or to some other nonprofit entity that could develop that land. That would be an alternative.

Senator HECHT. Well, we are quite willing to work with you on alternative wording on this.

Mr. PARKER. Fine. We'd be happy to do that.

Senator HECHT. Our primary purpose is recreational facilities, and Henderson is number one right now. That's the whole purpose of this.

Mr. PARKER. I think that could be worked out.

Senator HECHT. I appreciate your willingness to work together. My staff will get with you.

Mr. PARKER. Fine.

Senator HECHT. Thank you very much.

Senator DOMENICI. Thank you very much.

Now, I understand, Mr. Parker, you want to testify on Senate bill 2264.

Thank you, Senator Hecht.

I would like to insert a statement in the record that describes this bill.

[The prepared statement of Senator Domenici follows:]

Pete V.
Domenici
United States Senator

STATEMENT OF SENATOR PETE V. DOMENICI

S. 2264 would resolve a conflict over the competing uses of a parcel of land known as "A" Mountain, which is located in Las Cruces, NM. This bill will remove some mining claims on "A" Mountain that interfere with a very important National Aeronautics and Space Administration (NASA) project and will allow the Bureau of Land Management (BLM) to consolidate its ownership of lands in another area where it proposes to create a new national conservation area.

"A" MOUNTAIN

"A" Mountain, which derives its name from the fact that it has a large letter "A" painted on its face, is situated near the campus of New Mexico State University (NMSU) in Las Cruces. Although "A" Mountain is owned by BLM, the land has been withdrawn for the use of NMSU and NASA under two separate public land orders.

Approximately 1,400 acres of it have been withdrawn from public use and dedicated to use by NMSU for educational purposes. An additional 2,800 acres of "A" Mountain have been withdrawn for use by NASA as a communications antenna site operated in conjunction with NMSU.

NMSU operates a satellite tracking observatory for NASA on the 2,800-acre NASA site on "A" Mountain. The antenna range is used for tracking and for applied sounding rocket antenna design research. According to NASA, the range is vital to its research efforts and is important as it is one of the few areas in the country which is free of radio frequency interference. The research done at this range often requires very precise calibrations that may be distorted or degraded should mining equipment or other heavy equipment items be brought onto the range.

NASA has stated that it is necessary to maintain the range in an undisturbed condition to ensure the accuracy of the exacting work which is done there.

REMOVAL OF MINING CLAIMS

Section 1 of S. 2264 directs BLM to transfer unpatented mining claims within the two land withdrawals on "A" Mountain for other BLM lands of equal value in the vicinity.

There currently are 7 unpatented mining claims on the lands covered by these two withdrawals. Two of these claims are operated as commercial gravel pits, one of which is adjacent to the NASA site. It is likely that a patent will be issued for one of these gravel pits. Although no patent application has yet been filed for the other gravel pit, it is believed that the mining claim also is patentable.

NMSU shares NASA's concern about the impact of the gravel operation on the NASA site. NMSU desires to remove the gravel pit from the site because the traffic at the gravel pit disrupts

NASA's readings. NMSU must constantly recalculate its readings and retest its equipment because of interference from moving vehicles.

BLM cannot exchange these claims administratively because it is unable to exchange lands for an unpatented mining claim.

The parties have worked for many years to resolve this dilemma and have come up with the solution embodied in Section 1 of this bill. NMSU, the State BLM, and the gravel company that presents the most immediate threat to the NASA site have all agreed to the language in the bill.

BLM-NMSU LAND EXCHANGE

Section 2 of the bill permits BLM and NMSU to engage in a transfer of land within the NMSU withdrawal at "A" Mountain for lands that NMSU owns at the existing Aguirre Springs Recreation Area. This will allow BLM to consolidate its holdings as part of its proposal to create a national conservation area in this area.

Aguirre Springs consists of approximately 2,100 acres on the east face of the Organ Mountains 15 miles from Las Cruces, NM. The property consists of lands that were granted to NMSU by the United States in 1938 for use as a recreational and educational site. NMSU uses the area as a biology field station. Pursuant to an 1966 easement and right-of-way grant, BLM operates a recreational facility on the property. BLM has developed picnic areas, campgrounds, and trails at Aguirre Springs.

BLM desires to acquire the property for incorporation into the proposed 11,200-acre Organ Mountains Wilderness Area and the 59,100-acre Organ Mountains National Conservation Area. These

areas will be created as part of a Statewide BLM Wilderness bill that the New Mexico Congressional Delegation is currently drafting.

In exchange for these lands, NMSU would be granted lands of equal value from the property withdrawn for NMSU on "A" Mountain.

NMSU desires to acquire these lands in order to promote the orderly expansion of the NMSU campus in the future and to prevent encroachments on existing research facilities on the land.

Normally, this exchange could be conducted administratively. However, an administrative exchange is currently blocked because of an ongoing lawsuit between BLM and the National Wildlife Federation. This bill allows the exchange to go forward even though the lawsuit is still pending. The National Wildlife Federation has reviewed the legislation and has stated that it will not oppose this exemption.

Senator DOMENICI. We have your prepared remarks. They are brief, but in the interest of time, if you feel like you can accomplish your purpose and be yet briefer than your statement, we would appreciate it. It will be made a part of the record.

STATEMENT OF JAMES PARKER, ASSISTANT DIRECTOR, SUPPORT SERVICES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 2264

Mr. PARKER. Thank you, Mr. Chairman. I'll be very happy to do that.

We can and do support the intent of S. 2264. We would suggest some amendments, however.

Briefly the bill does four major things. It would allow us to dispose by removing from under the injunction of the National Wildlife Federation suit the lands involved.

It would, secondly, allow us to exchange out the mining claims—and there are seven of those—after an examination for validation or extinguishment, whichever would occur. In the case if they were not valid, there would be no issue, but those that were valid, it would allow us to exchange those mining claims out of an area which is critical to both the university and to NASA and to the research that goes on there.

It, thirdly, would allow New Mexico State University to exchange with BLM lands in the Organ Mountains area, part of which is a wilderness study area, part of which is a developed recreation site and is proposed as a national conservation area.

There is an issue regarding reverters. In that particular one also, which are somewhat similar to the Nevada case, but a different situation, there are some concerns of NASA on protecting their investments on the withdrawal that is under the jurisdication of the university right now.

Fourthly, it would allow us to remove the PLDs and allow BLM to dispose of any excess lands with right of first refusal to New Mexico State University. It would allow us to enter into some exchanges possibly with the state and others to acquire those lands for the university that wouldn't balance out possibly in the exchange. All of this is in accordance with our land use plans in that area. These lands are designated for disposal in our land use plans.

I have suggested some technical amendments that I think bear some consideration. We would ask possibly that we do some more work on those to make sure that we are all in sync between the university, NASA and BLM.

[The prepared statement of Mr. Parker on S. 2264 follows:]

MAY 20 1988

STATEMENT OF JAMES M. PARKER, ASSISTANT DIRECTOR, SUPPORT SERVICES, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 2264, A BILL "TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO EXCHANGE CERTAIN FEDERAL MINING RIGHTS FOR CERTAIN LANDS IN NEW MEXICO."

I appreciate the opportunity to appear before the Subcommittee today to discuss the views of the Department of the Interior on S. 2264.

Section 1 would authorize the Secretary of the Interior to exchange certain public lands for certain mining claims located on public lands which are withdrawn for programs of the National Aeronautics and Space Administration (NASA) and New Mexico State University. Upon determining the mining claims are valid, the exchange would be made on an equal value basis, determined by an independent appraiser.

Section 2 would authorize and direct the Secretary of the Interior to make Federal interests in lands, described in section 2(b), available for exchange. Section 2(c) describes New Mexico State University lands that are to be exchanged under this section.

Section 2(d) would provide that those public lands described in section 2(b), which were withdrawn by Public Land Orders 3685 and 2051, that are not acquired by New Mexico State University pursuant to this section, may be disposed of by sale to, or exchange with, the State of New Mexico, New Mexico State University, or other public or private entities. However, New Mexico

State University would be given a right of first refusal on any proposed disposition. Further, this section would require NASA and BLM to immediately begin negotiations to review Public Land Order 3685 and identify lands in excess of the withdrawal needs.

Section 2(e) would authorize and direct the Secretary of the Interior to revoke Public Land Order 2051 if the Secretary determines revocation to be necessary and appropriate to consummate an exchange under this bill.

The public lands covered by S. 2264 are located on what is known as "A" mountain in an urban expansion area of Las Cruces, New Mexico. Public Land Orders 2051 and 3685, which encompass approximately 4,182 acres, withdrew these public lands from appropriation, including the mining laws, in support of NASA communication antenna site facilities and New Mexico State University research. These facilities are cooperatively used by NASA and New Mexico State University for Federal programs. Sensitive electronic equipment, a part of NASA's program, and the University's Satellite tracking observatory, are installed at this facility. Heavy equipment, associated with two sand and gravel mining operations, interferes with and disrupts the electronic equipment.

Exchange of public lands for valid unpatented mining claims would benefit these important Federal programs. Additionally, the exchange and sale authorized by enactment of section 2, would transfer the withdrawn lands to the University in exchange for University land within the Organ Mountains Recreation Area. This Recreation Area is identified in BLM plans as having wilderness or national conservation area potential.

Disposal of the public lands encompassed by S. 2264 is consistent with BLM's approved Southern Rio Grande Plan Amendment.

We would support enactment of this bill if amended as we suggest, because it insures the integrity of valuable Federal programs and research conducted by NASA and the University.

We recommend these amendments:

First, the University acquired the lands identified in section 2(c) by a patent that contains a provision for reversion of title to the United States if the University alienates the land. We recommend section 2(c) be amended to include a provision that recognizes the reverter and authorizes conveyance of the land notwithstanding the reverter provision. Further, the bill should direct that these lands shall be appraised as if they were not subject to the reversionary clause.

Second, we recommend that section 2(a) be amended to provide that the exchange be on the basis of equal value as provided in section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Third, we recommend that section 2(b) be amended to provide that the land transferred to New Mexico State University continue to be used for research purposes in connection with Federal programs, and that title revert to the United States should such use cease.

Fourth, section 2(e) should be amended to include authority to also revoke Public Land Order 3685 and to authorize revocation of both Public Land Orders in part as well as in whole.

Finally, 2(e) should be amended to authorize the revocation in order to enable the sale as well as the exchange of lands pursuant to this bill. As section 2(e) is currently written, revocation of the Public Land Orders is authorized only for the purpose of exchange.

It is not clear whether this bill is intended to exclude from the injunction in the National Wildlife Federation lawsuit the exchange and sale transactions and the revocation of withdrawals that it authorizes. If that is intended, we suggest that the bill state that more specifically.

We will be happy to work with the Committee to develop appropriate language for the recommended amendments.

This completes my statement. I will be pleased to answer any questions.

Senator DOMENICI. Thank you very much.

We understand that you have some technical objections. We will work with you on that.

We also understand that you are concerned about making sure that this exchange is done on the basis of equal value as provided under the statute. We think the bill does that. We have no difficulty being absolutely certain, even if it is redundant, and we agree with you on that.

This is, as you well know, a longstanding dispute. It centers around the fact that there are some mining claims which are probably ultimately patentable, but we are caught in a situation where until they are patented, you have technical administrative problems in clearing up the title and doing any exchange work. But Congress can do that provided we are doing it in a manner that is consistent and fair. Those who had the mining claims have been waiting a long time to try to resolve this issue, and I believe that the bill has come up with an approach which is satisfactory to them, and I think fair.

I understand that NASA has a statement. They are concerned about the facilities and, obviously, the land under the facilities which are within the perimeter lines of the properties that would be transferred to New Mexico State University. They want to make sure that they are protected in the future. We are going to work with them.

It is my assessment here that New Mexico State University clearly intends that that be the case. As a matter of fact, one of the very reasons, as you well know, that we are here is because they want to protect the validity of that research which is, to some extent, inconsistent with the mining operation that is occurring. And, therefore, we are going to try to resolve all of that at one time.

We are going to put NASA's statement in the record.

We also have a statement from the president of the New Mexico State University with reference to this matter. They have been working on this for a long time. And the current president, in particular, has committed himself to resolving it. So, without objection, we will make that a part of the record.

We have a map of the land provided to us by New Mexico State University which shows with a little more specificity the land involved and the various uses. We will make that a part of the record.

For the record, we also have evidence of title to the land in the Organ Mountains that New Mexico State University received from the Federal Government under signature of Franklin Delano Roosevelt. That's interesting, and we'll put that in the record.

We have evidence of an easement that the Tortuga Indians have for movement across this land in an orderly manner for religious purposes. And that's a grant of right-of-way. We clearly intend in the bill to protect that.

We have a statement from Norman Ribble. He is here. He has agreed that there is no necessity for him to testify. He is one of the mining claim owners who has worked to resolve this issue. Being one who is interested in New Mexico State, we do thank him and

his partners for working this matter out. And his statement will be made a part of the record at this point.

We have a concern of the City of Las Cruces, evidenced by a city manager's statement. We are not quite sure it means with reference to jurisdictional control for zoning and planning purposes. We will confer with New Mexico State and have them work out something with the city. We will put their letter in the record also.

[The material submitted by Senator Domenici follows:]

National Aeronautics and
Space Administration

Washington, D.C.
20546

Reply to Attn of:

STATEMENT FOR THE RECORD
SUBMITTED BY

THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

ON S. 2264

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

U.S. SENATE

NASA has reviewed the bill S. 2264, "To authorize the Secretary of the Interior to exchange certain Federal mining rights for certain lands in New Mexico," and voluntarily submits the following comments on the effect this legislation would have on NASA.

Section one of S. 2264 would authorize the Secretary of the Interior to exchange certain Federal mining rights for certain land in New Mexico, and section two would authorize the Secretary "to make available for exchange" Federal interests in the lands in sections 13, 14, 15, 22, 23, 24, 25, 26, and 35 of T 23 S, R 2 E, New Mexico Principal Meridian, for the private interests in the lands in sections 19, 29, 30, and 31 of T 22 S, R 4 E, and section 6 of T 22 S, R 4 E.

The lands identified above as Federal interests include lands withdrawn by Public Land Orders (P.L.O.) 3685 and 2051. P.L.O. 3685 was executed on June 10, 1965 to withdraw lands for use by NASA. The legal description of that property is: Township 23 South, Range 2 East, Section 13; Section 14 N 1/2 and SE 1/4; Section 15, lots 15 to 169 inclusive and Sections 24 and 25. The areas described aggregate approximately 2,789 acres. P.L.O. 2051 was executed on February 17, 1960 for use by the New Mexico College of Agriculture and Mechanical Arts (now New Mexico State University (NMSU)). The legal description of that property is: Township 23 South, Range 2 East, Section 22, lots 5 and 6; Section 23, lots 1 to 16 inclusive; Section 26, lots 4, 5, 6, 7, and E 1/2; and Section 35, lots 6, 7, 8, 9, N 1/2 NE 1/4, and SE 1/4 NE 1/4. The areas described aggregate approximately 1,393 acres.

The lands within P.L.O. 3685 have been used by NASA for many years for research on a number of programs, including Apollo, Nimbus and Shuttle. It is adjacent to land owned or withdrawn

for NMSU pursuant to P.L.O. 2051. The university has had a number of research contracts with NASA and other federal agencies over a period of more than two decades. The work with NASA has been primarily in the areas of sounding rockets, antenna design and shuttle payload support research. Pursuant to a contract currently in effect between NASA and NMSU, the University provides technical support in telemetry, data handling, and radio frequencies studies and attitude control systems for Spartan, Get Away Specials, and other shuttle related programs.

Over the years, NASA has constructed various facilities on this land in support of this antenna related research. There is also an observatory on a mountain within the NASA withdrawal which has been used in support of NASA planetary missions.

In 1974, Public Law 93 453 was enacted. This statute specifically provided that the Secretary of the Interior "may" convey to NMSU, among other lands, the land described in P.L.O. 3685 and approximately 1,393 acres of land in the area of the White Sands Missile Range withdrawn by P.L.O. 3462 executed November 23, 1964, for use by NASA. At that time, NASA had no objection to the acquisition by New Mexico State University of the withdrawn land subject to the following conditions to be part of the transfer document:

> (1) that the land, including the NASA owned improvements there on, would continue to be held in connection with University conducted research and development work for NASA and others, (2) that none of the NASA owned antenna facilities or other NASA owned improvements are to be disposed of with the underlying land, and (3) that the Government/NASA reserves the right to transfer, abandon, or otherwise dispose of these NASA owned improvements with no obligation to restore the underlying land.

These conditions were acceptable to the Department of the Interior and the University; however, although steps were apparently taken to affect the transfer, the process was stopped before the conveyance was made.

Regarding S. 2264, the explanatory remarks of the bill's sponsor indicate that the intent of the legislation is "to resolve a conflict over the competing uses" of the lands within P.L.O. 3685 and P.L.O. 2051. The "competing uses" involve mining operations located on or near "A" Mountain and the research operations being conducted by NASA and NMSU.

The proposed legislation attempts to resolve this conflict first, by removing the mining claims from the subject lands by exchanging the mining claims on the withdrawal for lands in

other areas, and second, to then consolidate ownership of the withdrawal land by allowing NMSU to acquire the subject lands. It would appear that the underlying purpose of permitting NMSU to acquire the withdrawal lands is to continue to use the land "for research purposes in connection with Federal programs," as stated in the P.L.O. 2051 which withdrew the lands for use by the University.

The antenna range located on the withdrawal lands is vital to NASA's research efforts, the withdrawal is an important parcel as it is one of the few areas in the country which is free of radio frequency interference, and it is necessary to maintain the range in an undisturbed condition to ensure the accuracy of the exacting work which is done there. NASA has no objection to any transfer of property provided that the agency is afforded appropriate assurances that the affected land will continue to be used as an antenna range and for other research efforts compatible with operation of the range.

It is NASA's understanding that discussions between BLM and NMSU concerning the proposed transfer of land envisioned an exchange of only lands within P.L.O. 2051 for land at Aguirre Springs, not an exchange of lands within both withdrawals. Thus it is not clear why the NASA withdrawal is included in subsection 2(b). Further, exchange of the P.L.O. 3685 lands as envisioned by Section 2(b) would make Section 2(d) of the bill superfluous as NASA would no longer have any withdrawal property to transfer.

JAMES E. HALLIGAN, PRESIDENT

Box 3Z/Las Cruces, New Mexico 88003-0026
Telephone(505) 646-2035

May 17, 1988

U. S. Senator Pete V. Domenici
Subcommittee on Public Lands,
National Parks and Forests
Committee on Energy and
Natural Resources
U. S. Senate
Washington, D.C. 20510

Dear Senator Domenici:

New Mexico State University appreciates the opportunity to comment about Senate Bill 2264, the legislation which includes a proposed land exchange between the Bureau of Land Management (the "BLM") and New Mexico State University (the "University").

The desire of the federal government to establish a wilderness area in the Organ Mountains east of Las Cruces, New Mexico known as Aguirre Springs, which includes property currently owned by the University, creates an opportunity for the University to acquire land contiguous to the current campus of the University to allow an orderly expansion of the campus over time without becoming land-locked.

As you know, land withdrawn from the BLM to the University under Public Land Order 2051 borders the east side of the campus, and land withdrawn in connection with Public Land Order 3685 borders the campus north and east of the University (the "Withdrawals"). Several research facilities are located on the Withdrawals, including (i) an antenna range used by the Physical Science Laboratory, (ii) a veterinary-entomology laboratory, (iii) astrological observatories used by the Astronomy Department, and (iv) a waste transfer facility. The estimated replacement cost value of the facilities exceeds $6 million. The nature of the existing facilities, and of other facilities which the University may locate on the Withdrawals if control over the property by the University is assured, makes it vital that the University prevent encroachments which would limit the usefulness of the facilities.

0101-49-880517-02

NMSU
1888 Centennial Celebration 1988

Senate Bill 2264 permits the BLM to exchange land for unpatented and patented mining claims currently located on the Withdrawals which interfere with research conducted in connection with the facilities. The Bill also provides a future mechanism for the University to obtain title to portions of the Withdrawals.

The University considers the Bill to be of utmost importance because the Bill allows for future University growth in enrollment and in University research activities. New Mexico State University has been the fastest growing university in New Mexico for many years; we project that enrollment will double in the next 25 years.

The Research and Public Service Budget for the University will exceed $82 million during fiscal year 1988-89. The stature of the University nationally as a research center will be significantly enhanced by acquisition of the property because of the ability to expand research facilities.

We understand that the National Aeronautics and Space Administration has objected to certain language in the pending legislation, specifically, 1) that the property included in Public Land Order 3685 should not be included in Section 2(b) as being available to exchange for the Aguirre Springs property, and 2) the sentence in Section 2(d) which states that "The national Aeronautics and Space Administration and the Bureau of Land Management are directed to immediately begin negotiations to review Public Land Order 3685 and identify lands that may be in excess of the withdrawal needs." Since New Mexico State University did not intend to acquire any of the land included in the Public Land Order 3685 through the exchange for the Aguirre Springs property, we have no objections to correcting the pending legislation to reflect that fact.

0101-49-880517-02

In closing, New Mexico State University emphasizes that it is vital to the best interests of the University to provide a buffer between the current University campus and expanding real estate developments north and east of the campus.

We appreciate your support in connection with the legislation, and your continuing support for our University. Best wishes.

Sincerely,

James E. Halligan

cc: Honorable Dale Bumpers
Honorable Malcolm Wallop
Sean D. Bersell

0101-49-880517-02

BUSINESS AFFAIRS

Box 3AA/Las Cruces, New Mexico 88003-0027
Telephone: (505) 646-2432

February 5, 1988

Mr. Ray Regan
Sutin, Thayer & Browne
150 Washington Avenue
Suite 300
Santa Fe, New Mexico 87501

Dear Ray:

I have attached a map of Withdrawal No. 1 which Owen Lockwood has prepared for the Bureau of Land Management. The map indicates the university activities conducted on the withdrawn land. Owen will also provide the following data to the BLM:

1) The replacement value of the PSL antenna range is estimated at $5 million.

2) The value of the vet lab is $750,000.

3) The cost for the hazardous waste facility was $170,000.

4) The electric power research facility is actually a "lineman school" for training of utility personnel. It has just been developed and no value has been assigned as of this time.

Please let me know if you need any additional information.

Sincerely yours,

DICK

Richard T. Wells
Vice President for Business Affairs

shw

Attachment

0511-14-880205-01

NMSU
1888 Centennial Celebration 1988

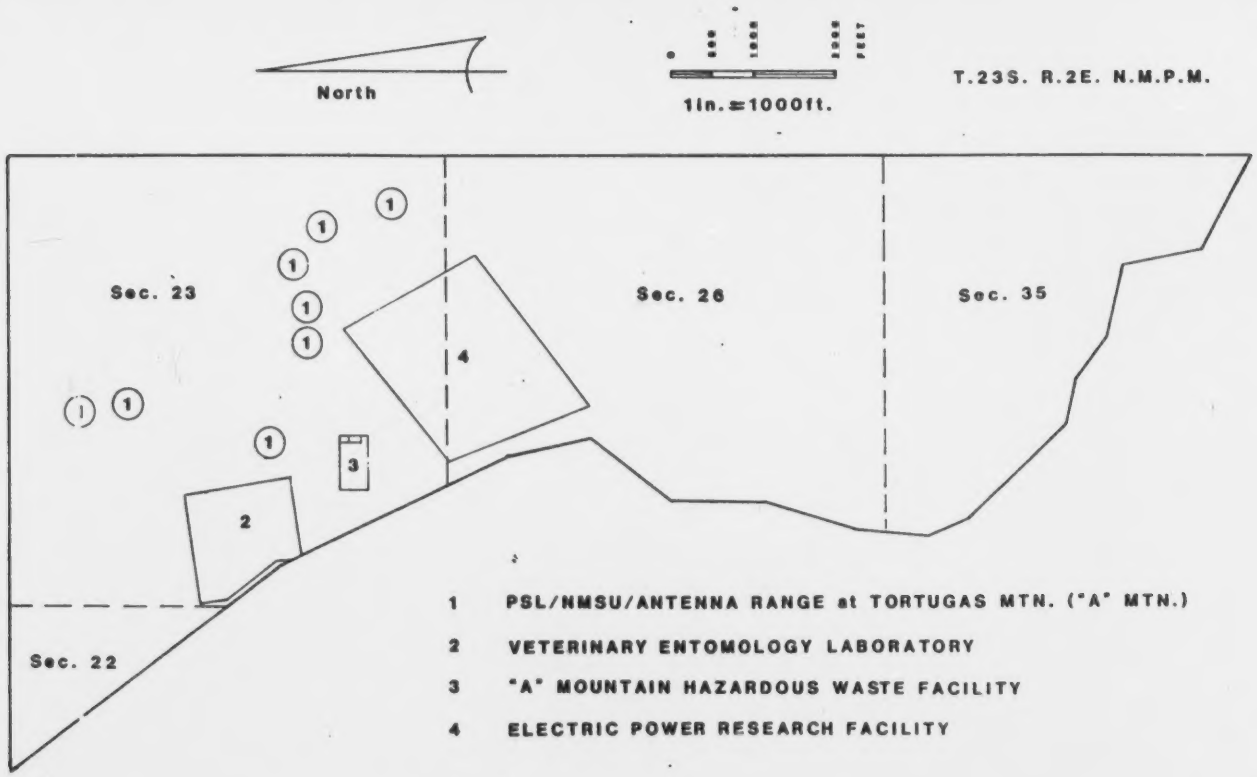
North
1in.=1000ft.
T.23S. R.2E. N.M.P.M.
Sec. 23
Sec. 26
Sec. 35
Sec. 22
1
2
3
4
1 PSL/NMSU/ANTENNA RANGE at TORTUGAS MTN. ("A" MTN.)
2 VETERINARY ENTOMOLOGY LABORATORY
3 "A" MOUNTAIN HAZARDOUS WASTE FACILITY
4 ELECTRIC POWER RESEARCH FACILITY

EXHIBIT I

Las Cruces 056080

4—1040

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, It appears from evidence on file in the General Land Office that full payment has been made by The Regents of the Agriculture College of New Mexico, a corporation, according to the provisions of the Act of Congress of February 14, 1938 (Public No. 429 - 75th Congress) for the Sections nineteen, twenty-nine, and thirty, and the northeast quarter and the east half of the southeast quarter of Section thirty-one in Township twenty-two south of Range four east of the New Mexico Meridian, New Mexico, containing two thousand eighty-nine acres and seventy hundredths of an acre, according to the Official Plat of the Survey of the said Land, on file in the General Land Office:

NOW KNOW YE, That there is therefore granted by the UNITED STATES OF AMERICA unto the said The Regents of the Agricultural College of New Mexico the Land above described, TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said The Regents of the Agricultural College of New Mexico, and to its successors, forever, for the establishment of a recreational site and for educational purposes; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States. Also reserving to the United States all mineral deposits in the land above described, together with the right to prospect for, mine and remove such deposits only in accordance with regulations which may be prescribed by the Secretary of the Interior.

This patent is issued upon the express condition that if the corporation fails to use the lands for the establishment of a recreational site or for educational purposes, or attempts to alienate the land, title thereto shall revert to the United States.

BK 95
PG 13

PATENT

IN TESTIMONY WHEREOF, I, Franklin D. Roosevelt,

President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the FIRST day of NOVEMBER in the year of our Lord one thousand nine hundred and THIRTY-EIGHT and of the Independence of the United States the one hundred and SIXTY-THIRD.

By the President: Franklin D. Roosevelt

By Jeanne E. Vaughn, Secretary.

Evelyn S. Adams
Recorder of the General Land Office.

RECORDED: Patent Number 1002600

GRANT OF RIGHT-OF-WAY

Agreement made this 25th day of October, 1985 between La Corporacion de Los Indigenes de Nuestra Senora de Guadalupe (hereinafter referred to in this instrument as "La Corporacion") and New Mexico State University (hereinafter referred to in this instrument as "the University").

WHEREAS La Corporacion is a nonprofit New Mexico corporation dedicated to promoting certain cultural and religious traditions, including the worship of our Lady of Guadalupe; and

WHEREAS La Corporacion has conducted an annual pilgrimage from the Casa del Pueblo at Guadalupe (Tortugas) to Tortugas Mountain, sometimes referred to as the "A" Mountain, since the 1800's; and

WHEREAS the University is the custodian of the land upon which Tortugas Mountain is located, and owner of the land between Guadalupe (Tortugas) and the mountain, east of interstate highway I-10 to Tortugas Mountain; and

WHEREAS the University and La Corporacion have enjoyed a long history of mutual respect and cooperation; and

WHEREAS the University wishes to support La Corporacion in its efforts to continue its cultural and religious traditions;

NOW, THEREFORE, it is mutually agreed and stipulated as follows:

New Mexico State University does hereby grant a right-of-way unto La Corporacion, to enter University property from December 10 to 12 of each year, and at other times subject to approval of the University, for the purpose of conducting its annual pilgrimage to Tortugas Mountain by traveling from the Casa del Pueblo to Tortugas Mountain and to otherwise carry on its religious traditions including the worship of Our Lady of Guadalupe. It is understood and agreed that the route to be followed from the Casa del Pueblo to Tortugas Mountain may be changed by the University, so that it can enjoy full use of its land. This grant of right-of-way will be in effect for a period of 99 years, and will expire automatically in the year 2084. La Corporacion and the University expressly reserve the right to renew or extend this grant of right-of-way at any time before or after this document has expired.

If this Lease is determined invalid by a court of competent jurisdiction, the University shall not be liable for any damage to La Corporacion. This agreement is not valid until approved by the Board of Regents of New Mexico State University.

WITNESS

Emma D. Narvaez
EMMA D. NARVAEZ

LA CORPORACION DE LOS INDIGENES
DE NUESTRA SENORA DE GUADALUPE

By Robert L. Gonzales
ROBERT L. GONZALES, President

By Henry F. Narvaez
HENRY F. NARVAEZ, Attorney

NEW MEXICO STATE UNIVERSITY

By David W. King
PRESIDENT, BOARD OF REGENTS

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

SUBSCRIBED AND SWORN TO before me this 18th day of November, 1985, by ROBERT L. GONZALES, HENRY F. NARVAEZ and EMMA D. NARVAEZ, on behalf of La Corporacion de Los Indigenes de Nuestra Senora de Guadalupe.

Marlene H. Arrijo
Notary Public

My Commission Expires:

May 22, 1987

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

SUBSCRIBED AND SWORN TO before me this 25th day of October, 1985, by David W. King, President, Board of Regents, on behalf of New Mexico State University.

Janie Pena
Notary Public

My Commission Expires:

July 16, 1988

6240C

RIBBLE CONTRACTING INC.
1000 Gabaldon Rd., NW, Box 25411, Albuquerque, NM 87125, Phone (505)247-4313

May 18, 1988

The Honorable Dale Bumpers
Chairman, Subcommittee on Public Lands, National Parks and Forests
Committee on Energy and Natural Resources
United States Senate
Washington, DC

Re: Senate Bill #2264

Dear Senator Bumpers,

I am writing you this letter as an explanation of the problem we have with our mining claim, and why the proposed Senate Bill 2264 is necessary to correct this problem.

We own a 40 acre mining claim, the Triangle #2, BLM identification: NMMC-74453, located in Section 23, T,23.S, R2E, near Las Cruces, New Mexico. This claim was orginally claimed in September of 1954 and is today a valid mining claim. This claim is located in the area withdrawn from the BLM to New Mexico State University in February of 1960 by the Public Land Order 2051. This order gave NMSU the use of these lands "subject to valid existing rights."

Later in the 1960's NMSU and NASA constructed 3 large towers on these lands for scientific purposes and these purposes are still an active program today. Unfortunately one of these tower structures is located on our Triangle #2 mining claim.

The presence of this structure has denied us the use of this claim for the extraction of minerals and our normal business operation. The operation of our equipment, its emission noise, and the fugitive dust of the mining and milling operation interfere with the equipment and mission of NASA and NMSU.

We have for several years battled this issue and resolved with NMSU that congressinal action to allow the exchange of this mining claim for other properties would be the most prudent manor in solving our problem. The University and NASA could continue their scientific work at their present location and another location would allow us the right to proceed in our business.

Dr. Jim Halligan, President of NMSU and myself both contacted the The Honorable Pete Domenici for his direction and influence in helping us to resolve this issue.

Senator Domenici has thoroughly researched the validity of these properties and claims and has presented this bill for your consideration. We appreciate his efforts to alleviate this disturbance to NASA and NMSU in their operation and to allow us a location to proceed in a normal course of our business.

We respectively request your concurrance and a favorable recommendation of Senate Bill 2264.

Sincerely,

Norman Ribble

Norman C. Ribble

1988 MAY 16 PM 3:20

City of Las Cruces

May 11, 1988

The Honorable Pete V. Domenici
United States Senator
2317 Dirksen Building
Washington, DC 20510

Dear Senator Domenici:

The Las Cruces City Council has recently learned of Senate Bill 2264 regarding a proposed land swap between the Bureau of Land Management and New Mexico State University, and has requested that I write indicating their objection to this Bill as submitted.

This tract of land, approximately nine sections, is immediately east of the Las Cruces city limits. Sole control of the development of this property by New Mexico State University could create major problems regarding zoning and long range planning. The City Council is currently finalizing a Future Land Use Plan for Las Cruces, and they feel it imperative that input be allowed in the proposed development of these adjacent lands to assure compatibility as it is developed. Also, the City of Las Cruces and Dona Ana County have recently established a Five Mile Extra-Territorial Zone Commission. It is the purpose of this Commission to assure compatibility between the City and the County in any development within this five mile ETZ. Input by the ETZ into development of this area is also imperative.

We respectfully request, therefore, that SB 2264 be modified in order that Las Cruces and the ETZ Commission have direct authority in all matters concerning zoning, infrastructure, long range planning, etc. Loss of such control of this tract could cause the months of effort put into the Future Land Use Plan to be fruitless on future development east of Las Cruces.

Thank you for your consideration of this request.

Sincerely,

Dana A. Miller
City Manager

dw

c: City Council
Dona Ana County Manager
NMSU President
NM BLM Manager

Senator DOMENICI. And there are further letters from landowners abutting this property that have expressed some concern as to the future use. They will be referred to New Mexico State University to see what they can tell us about either misconceptions or the like on their part before we proceed with the markup of the bill.

Is there anything further that you desire to add with reference to this bill?

Mr. PARKER. No, sir, other than it appears to be very much to be in the national interest.

Senator DOMENICI. Thank you very much.

The committee will adjourn.

[Whereupon, at 10:53 a.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Telephone 4141 Meadows Lane
(702) 877-9622 Las Vegas, Nevada 89107

May 25, 1988

Honorable Chic Hecht
United States Senate
302 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator:

Thank you for your comments in support of S. 1461 at the May 20 Public Lands, National Parks and Forests Subcommittee hearing. Your sponsorship and support of the proposed legislation is appreciated.

It is my understanding that the hearing record remains open to receive additional comment on S. 1461. The Las Vegas YMCA requests that the comments below be included in the record to respond to the concerns of and to correct misstatements made by the Bureau of Land Management witness.

The following responds to each of the five concerns identified by the BLM in its testimony in opposition to S. 1461:

1. The BLM believes no benefit inures to the United States by virtue of S. 1461.

To the contrary, the United States would clearly benefit from the provision by the Las Vegas YMCA of recreational opportunities and public services. Facilitation of such service is the very purpose of the Recreation and Public Purposes Act. As you pointed out in your hearing comments, the goal of S. 1461 is to enable the Las Vegas YMCA

to continue to provide its services to the Las Vegas community and to expand such service into the Henderson community. There can be no serious question that the United States benefits from such service.

Indeed, our operating budget for 1985 to 1987 shows that, in the past three years, the Las Vegas YMCA has provided $2,856,000 in services to Southern Nevada. Much of this service has been in the form of free or subsidized membership for socially and/or economically disadvantaged children. Indeed, a study has shown that in 1987 alone we provided $250,000 of free or reduced-price services to underprivileged children. Our service also takes the form of physical education programs for more than two hundred severely mentally retarded and handicapped children, a diabetes program, juvenile court referral programs, and a head injury rehabilitation program for all ages. It would cost the local government many thousands of dollars each year to provide similar services if our YMCA program were not available. Further, our acquatics and summer programs serve thousands of children and provide a form of day care, solving a critical problem for many families, particularly those with low and fixed incomes. If the local government were to provide such programs in our absence, the cost would, over a period of years, easily run into the millions of dollars.

If this bill does not pass, we will be forced to evaluate all our programs and eliminate some services. Plainly, if we are forced to eliminate programs, someone must fill the void. The burden of providing those services would likely fall to the local government. That Clark County faces the prospect of losing millions of dollars in social services which it would be obligated to replace is presumably one of the reasons for their strong support of this legislation.

2. <u>The BLM believes the bill creates a federal subsidy</u>.

The "subsidy," if that term is appropriate, came twenty years ago, when the BLM, in apparent recognition of the value and benefit of our programs, transferred title to the Henderson land to the Las Vegas YMCA. That transfer was a good idea in 1969 and it is equally appropriate today.

We do not doubt that in the usual case R&PP Act land should revert back to the Federal government if used for other than recreation and public purposes. Ours is not the usual case, however. One of the primary purposes of this legislation is to enable us to use a portion of our land for recreation and

public purposes. Rather than contradicting the objectives of the transfer made to us twenty years ago, this legislation furthers those objectives.

Because the purpose of this legislation is consistent with the goals of the Recreation and Public Purposes Act, it establishes no improper precedent. Moreover, the BLM recognizes that it is appropriate to lift R&PP Act restrictions in certain instances where the public interest is served. Indeed, several years ago the BLM waived those restrictions to enable us to sell some R&PP land to the State of Nevada for public transportation purposes. In addition, Congress itself has, on several occasions, recognized the need to remove such restrictions and has enacted appropriate legislation.

The BLM erroneously suggests that enactment of S. 1461 would result in a "loss to the U.S. Treasury." In fact, the BLM conveyed title to the parcel to the Las Vegas YMCA two decades ago. The BLM has not indicated that, in the event of a reversion, it would dispose of the parcel to gain funds for the U.S. Treasury. Rather, in public hearings in the House and Senate the BLM has offered only two alternative uses of the parcel -- either R&PP transfer to Clark County or transfer under the Burton-Santini Act to obtain other lands. Neither option would benefit the U.S. Treasury.

Clark County has expressed no interest in taking an R&PP transfer and bearing the accompanying costs and expenses of providing the services which the YMCA could provide. Rather, Clark County strongly supports S. 1461. Further, any transfer under Burton-Santini could be accomplished only to the detriment of the Southern Nevada community -- a potential cost of millions of dollars of lost social services otherwise provided by the YMCA.

3. The BLM claims that the YMCA would use land sale proceeds to pay its debts "as a part of the bankruptcy proceedings."

This statement exposes the BLM's fundamental misunderstanding of the proposed legislation. The Las Vegas YMCA successfully emerged from its bankruptcy proceedings over three years ago. Today, our indebtedness is owed primarily to the United Way and to First Interstate Bank of Nevada. The Subcommittee can be assured that land sale proceeds will not be attached by creditors or divided up by a bankruptcy court as the BLM erroneously suggests.

Further, we have been willing to accept stipulations limiting the amount of land we are authorized to sell and restricting the use of proceeds.

We only wish to sell that portion of the Henderson land which is in excess of our needs. Our Las Vegas facility sits on approximately five and one-half acres of land. Assuming an expanded ten-acre facility in Henderson, we would expect to sell approximately thirty of the forty acres we now own. We have no objection should the Committee wish to restrict our authority to the sale of thirty acres.

Likewise, should the Committee decide to restrict use of land sale proceeds to capital construction and retirement of United Way advances, we have no objection. If stipulations are attached to this legislation, then the sale proceeds would be directed only toward our United Way debt and toward the development of a new facility on the retained portion of our Henderson land. No part of the proceeds would be directed toward any present or future creditor other than the United Way.

4. The BLM notes that there are two pre-existing rights-of-way across the parcel.

The BLM points out that the Nevada Power Company and the Clark County Sanitation District hold easements which encumber the parcel. In addition to my position as Chairman of the Board of the Las Vegas YMCA, I also happen to be President of the Nevada Power Company. As such, I appreciate the BLM's concern for our pre-existing rights. Because, however, the bill transfers only the United States' interest in the land and does not extinguish valid existing rights, the two easements do not appear threatened. To the extent, however, the Subcomittee finds it appropriate to make technical revisions as to the existing rights-of-way, the Las Vegas YMCA had no objection.

5. The BLM finds the bill technically objectionable as drafted.

The BLM finds the bill "confusing" because it transfers the United States' entire interest in the parcel when, according to the BLM, it need only transfer the United States' reversionary interest. This is based upon the BLM's initial contention that the reverter is the United States' only interest. The BLM contradicts itself, however, by noting that, in addition to the reverter, the United States retains any mineral rights which may be on the land.

As written, the bill clearly requires the BLM to transfer all of the United States' remaining interest in the parcel. To the extent, however, the bill is technically revised to accomplish the same goal by extinguishing the reverter and transferring the mineral estate, we have no objection.

We do oppose the BLM's suggestion that the United States retain mineral rights to the parcel. To my knowledge, in the twenty years of ownership by the Las Vegas YMCA, mineral rights have not been an issue and no mineral entry has been accomplished. The BLM should have no interest in managing mineral rights which have no value on a small parcel in private ownership.

Thank you for including these comments in the S. 1461 hearing record.

Sincerely,

Charles Lenzie

Charles Lenzie

PROTECT GLACIER
CANYON COALITION, POB 422
HUNGRY HORSE, MT 59919

May 13, 1988

Chairman of Public Lands Subcommittee
Energy and Natural Resources Committee
U.S. Senate
Washington, D.C. 20510

RE: OPPOSE SENATOR MELCHER'S BILL _ S. 1849

Dear Chairman,

The Coalition wishes to go on official hearing record file as being strongly opposed to Senator Melcher's personal relief bill, S. 1849. This bill is a serious threat to the integrity of the entire National Park Service land acquisition program. Attached is applicable correspondence to be entered into official Subcommittee records including an informational letter from Glacier National Park. The Coalition's reasons for opposition are detailed therein as well.

The Coalition urges the Public Lands Subcommittee to thoroughly scrutinize Senator Melcher's misdirected action to "undo" a signed and sealed contract between the U.S. Government and the Robinson families, not to mention the setting of a dangerous precedent to revoke prior contracts made by the NPS.

Please inform the Coalition of the Subcommittee's action with regard to S. 1849. Thank you very much.

Sincerely,

Sharlon L. Willows

Sharlon L. Willows
Research Coordinator

United States Department of the Interior
NATIONAL PARK SERVICE
GLACIER NATIONAL PARK
WEST GLACIER, MONTANA 59936

IN REPLY REFER TO:

L1425
x03-160

April 14, 1988

Ms. Sharlon Willows
Canyon Coalition
P.O. Box 422
Hungry Horse, Montana 59919

Dear Ms. Willows:

We are writing in response to your letter dated April 8, 1988, concerning your request for information on S-1849 introduced by Senator Melcher.

S-1849 is a personal relief bill that would overrule an original property settlement given to the Robinson, Rae, and Kane families in 1967. The bill would grant Con and Gerald Robinson lifetime privileges to the property.

The Robinsons have had use and occupancy permits for the property through July 1984. They were also given the opportunity for life estate at the time of purchase, which they refused.

This bill, if passed, could compromise the National Park Service land acquisition program nationwide and the values we are charged with protecting. At Glacier alone, 8 others have term leases or life estates and would want to have them extended. Glacier is also concerned with the implications of fair market transactions conducted in 1967 being raised twenty years later for congressional action. This bill could have implications regarding any land that was purchased by the National Park Service in the past.

If you have further questions please give us a call.

Sincerely,

Acting for

Sandra H. Key
Assistant Superintendent 406-888-5441

PROTECT GLACIER
CANYON COALITION, POB 422
HUNGRY HORSE, MT 59919

ASSOCIATED ORGANIZATION
National Parks & Conservation Association

April 27, 1988

Senator John Melcher
U.S. Senate
Washington, D.C. 20510

RE: S - 1849

Dear Senator Melcher,

The Coalition strongly opposes S-1849, your proposed special-interest bill. This bill would apparently overrule, without due cause, a property settlement given to the Robinson, Rae, and Kane families in 1967. This bill would also grant Con and Gerald Robinson lifetime privileges to the property located in Glacier National Park, an opportunity they refused at the time of purchase.

This bill has the negative potential of compromising the National Park Services' land acquisition program nation wide by setting a dangerous precedent to revoke prior contracts made by the NPS. Further, the implications of fair market transactions conducted in 1967 being raised twenty years later for congressional action is misdirected action on your part. THIS BILL HAS THE POTENTIAL TO UNDERMINE ANY LAND PURCHASE AGREEMENT BY THE NATIONAL PARK SERVICE IN THE PAST.

The Coalition is concerned about your quiet actions to advance this personal relief bill with potentially disastrous ramifications. Word has it that you will attempt to tag this bill onto another piece of major legislation as a "rider"--the bill may therefore not receive adequate scrutiny. The Coalition is also concerned whether or not you are attempting to repay personal favors to the families addressed in this bill for contributions to your campaign.

The Coalition wants to be kept completely up-to-date on your actions to advance S-1849. In addition, please send a copy of the exact bill you have proposed. Has this bill been introduced yet? Thank you for sending timely information and updates.

Sincerely,

Sharlon L. Willows

Sharlon L. Willows, Research Coordinator

cc National Parks and Conservation Assoc.
Director of Federal Activities
Attn: Laura Loomis

EC

NORTH FORK HOSTEL
Box 1
Polebridge, Montana 59928

May 18, 1988

Senator John Melcher
U.S. Senate
Washington, D.C. 20510

Dear Senator Melcher:

Please include this letter in the hearing record of May 20th for S.1849, a personal relief bill for Conwell and Gerald Robinson to give them life estate on their former property in the North Fork of Glacier National Park. I have a copy of the bill and have read it over many times in the last six months.

Con Robinson is a friend. I am familiar with the property as I once helped him mend fence for his horses. I encouraged him to talk to Glacier National Park officials when his lease was up and offered my help. In 1986, he attended, at my urging, an Inter Local Agreement meeting for the purpose of telling his story to management agencies and citizen /landowner's groups relating to the North Fork which was held at the Whale Creek Community Hall, but he said nothing and left early.

Although I would like to have Con Robinson retain use of his former property, I am in the unpleasant situation of having to oppose it by legislative action. Glacier Park condemned the property 21 years ago because of "intention to subdivide and develop" and involved a signed contract of $82,500 for 130 acres. The Robinsons refused life estates in 1967, possibly because the amount of money would be less.

I am very concerned that this is not an isolated instance. In Glacier National Park alone, eight others are wanting to have their term leases or life estate extended in some fashion on land that now belongs to the people of the United States held by the National Park Service. S. 1849 if passed would set a precedent and pose legal problems that bring into question land sales to the federal government within National Parks both old and new as well as future transactions. I do not believe this is what you or Con Robinson intended and I urge you to cease sponsorship of this bill.

Sincerely,

John Frederick, Jr.

John Frederick, Jr.

cc: Senators Dale Bumpers and Bennett Johnston

(406) ~~888-5518~~ 862-0184

Mail Delivery Twice Weekly

6280 Alamosa Ln
Bozeman,Mt. 59715
Dec.21,1987

Senator John Melcher
730 Hart Office Bldg.
U.S.Senate
Washington,D.C. 20510

Dear Senator Melcher:

I write concerning S.1849. I'm sorry you got drawn into this. You may have only Mr Robinson's side of the story. I suggest you talk with former Supt. Phil Iverson and former Management Assist. Dan Nelson of Kalispell who was involved with the purchase in 1969. It is a bad bill and I recommend it be withdrawn. Here's why.

It is simply too late to grant a life estate to Mr Con Robinson for land that is now owned by the American people - having been purchased with public funds. It would be illegal and would open the door for all kinds of odd requests through out the country from people who want to reoccupy federal land. Simply saying it would not set a precedent does not make it so (that's a Reagan ploy).

It could essentially destroy the life tenancy provision which has been so beneficial to landowners. This would be tragic as this provision now provides benefits to both the landowner and the NPS. But who would bother to use it if they would only have to get relief such as you propose to get a life estate without compensation to the American people who own the land.

The only conceivable way to legitimize this proposal, if it could be truly proven that Mr. Robinson was wronged which is highly unlikely, would be to go back in time to 1969 and have Mr. Robinson pay the difference between what he was actually paid for the property and what he would have been paid had he been granted a life estate at that time. He would thus owe the government a back payment of 1% of the purchase price per year of his life expectancy at that time.

The Section of S1849 that limits his rental fee to $100 per annum is also illegal since the Congress has rather specifically required NPS to charge rental rates that are comparable when rental is applicable, which of course it is not in this case. A comparable rental rate would considerably exceed $100 per week.

Please advise me if this bill reaches a Committee Hearing so that I might provide testimony.

I wish you and your family a very happy holiday season.

Best Wishes, 14461

Robert C. Haraden, former Supt.
Glacier National Park

cc: Senator Baucus

6504 Leverich Lane
Bozeman, Mt. 59715
June 16,1988

Senator J.Bennett Johnston
Subcommittee on Public Lands, National Parks & Forests
Senate Committee on Energy and Natural Resources
Dirksen Senate Office Bldg.
Washington, D.C. 20510

Ref: S.1849

Dear Mr. Chairman:

FOR THE HEARING RECORD

This is a bad bill and should be rejected.

Here's why -

Our Senator Melcher got suckered into this before he heard both sides of the story. He was misinformed and when the true facts were presented to him his position was too entrenched to retreat - an unfortunate quirk of human nature.

Mr. Robinson's testimony that he and his brother were never consulted us simply untrue. They,in fact, made the first overture to sell their land to the National Park Service. His testimony that the National Park Service dealt with an aunt, Mrs Isabelle Rae, without their knowledge is untrue as the files reveal. A family squabble at the time has tended to confuse the issue.

Senator Melcher's statement that the property was seized through condemnation failed to note that it was a "friendly"condemnation meaning both parties agreed to the condemnation process in order for the court to set the fair value.

The Robinsons were given two 5 year special use permits which was an appropriate part of the settlement. An additional 5 year use period was given them which was highly questionable, but in consideration of the Robinsons.

Senator Melcher's statement that "The Park Service has spent thousands of dollars over the past two decades to unfairly prevent Conrad and Gerald Robinson from using their Glacier Park cabin like other previous owners there" is in error. I can assureyou personally that no funds were expended for this purpose from 1981 until 1986 while I was Superintendent of Glacier National Park. This was at the time the last five year use period expired.

Apparently Senator Melcher does not understand that "other previous owners" who enjoyed life estates were permitted to do so because they agreed to a lower purchase price - something the Robinsons were offered, considered and rejected.

There is no authority to now give the Robinsons use of property that has belonged to the American public for over 20 years. Passage of this bill would simply be a violation of public trust.

This case is being watched by past and present inholders to assess what actions they might take. Passage of this bill will create untold problems for park managers in Glacier and elswhere charged by Congress to manage these lands.

The precedent set would be an extreme disservice to the American public and management of the National Park Service.

Thankyou for your consideration.

Respectfully yours,
Robert C. Haraden
Robert C.Haraden, Former Supt.
Glacier National Park 1980-86

May 28, 1988

"A" Mountain Preservation Coalition
1515 Candlelight
Las Cruces, NM 88001

Senator Dale Bumpers, Chairman
Subcommittee on Public Lands and National Parks
Committee on Energy and Natural Resources
Suite 360 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Senator and Members of the Subcommittee:

We, the representatives of a large number of residents of the County of Dona Ana, New Mexico, whose views were not presented at the hearings of May 20th 1988 on S. 2264, ask that this letter be added to the record.

Our main concern is with Sec. 2 (d) which grants a first option to New Mexico State University (NMSU) to acquire all of the lands under PLO's 3685 and 2051 which are extraneous to the exchange, and in the event NMSU does not exercise this option, permits such extraneous lands to be sold to private entiti es.

We ask that these lands not truly pertinent to the purposes of the exchange, be retained by the United States and that the bill authorize only a partial revocation of the PLO's 2051 and 3685. We therefore urge that Sec 2 (d) be deleted.

The University has given no statement to your committee or the public of its plan for these lands which abut the City of Las Cruces and as such are prime targets for commercialization and development. Some University land is now under lease to developers for shopping mall and industrial uses. The land they could acquire under S 2264 would be free for them to exploit similarly for proprietary enterprises. As a state entity, they are free of city and county zoning and planning constraints. We agree with the University's mission - education and research - and therefore request that a use and reverter clause be attached to all lands acquired by the University persuant to this bill.

The Bureau of Land Management testimony before you wisely asks that the land to be deeded under sec. 2(b) to NMSU have a use and reverter clause.

We are strongly of the opinion that in the public interest an independent appraisal should be conducted to determine the equal value basis for the exchange of government lands described in sec 2(b) for the alleged NMSU owned lands described in sec 2(c).

If sec 2(d) is not deleted in its entirety as requested above, then as a minimum, we urge the deletion of that portion permitting sale to private entiti es. Then, make it honest, public purpose legislation by permitting equal priority of acquistion by the City of Las Cruces, as well as the University and require a reverter clause if the land is alienated or not used by either party for the uses authorized. That is by the University for scientific,

educational, non-proprietary use or by the City of Las Cruces for the purpose of an open area public natural park.

Respectfully submitted,

"A" Mountain Preservation Coalition,

By: Cal Traylor — Charlotte L. Boyce

Frank K. Daniels — Marianne Wolfenden

See signatures attached.

20 signatures follow

cc: Senator Bennett Johnson
Representative Morris Udall
Secretary Donald P. Hodel

May 3, 1988

Judge Frank B. Zinn
1805 Salinas Dr.
Las Cruces, NM 88001
(505-522-0563)

Hon. Jeff Bingaman
United States Senator
502 Hart SOB
Washington DC 20510

Re: S 2264 "A" Mountain land transfer.

Dear Senator Bingaman:

My Las Cruces neighbors are gathering signatures in opposition to the "A" mountain land transfer measure. When asked to sign such a petition I declined. I explained that I believe petitions should be preceded by low key dialogue to get the facts necessary to measure the wisdom of the petition. Then I was asked to help get the facts. This I now seek to do.

My inquiry of the city and county officials wasn't helpful, for they seem to have had no part in the matter. In a meeting with my neighbors, individuals reported of talking to BLM and NMSU sources that revealed nothing upon public record about planning for the land.

The foothill acreage lies in the crescent of the city's eastward growth pattern. It includes some present roads and likely future street and connector routes between our major highways. The City and County governments must be involved in the decisions made affecting this land.

The B.L.M., the State Land Commissioner, and NMSU are the major land wholesalers surrounding our city. They are not, by law, responsible to city and county government. They must be responsive to public needs and opinion. To permit this to be a reality, well publicized hearings and frank disclosure of concepts and plans is essential.

I have faith in you and the system. In my own behalf I ask that you inform me about the material you have gathered preceding the introduction of the transfer bill. What plans or concepts are being considered by NMSU for the land surrounding the mountain. Are there to be meetings or public hearings on the bill? Are there any reports now available on the proposed uses of the land?

Communication is the preferred alternative to confrontation, so please help me in my effort to get the facts for myself and for the petitioners.

Sincerely yours,

Frank B. Zinn

TO: Senator Pete Domenici
Senator Jeff Bingaman
Representative Joe Skeen
The City Council, City of Las Cruces
The County Commissioners, Dona Ana County

We who have subscribed to the petitions attached, oppose S-2264 proposing the trade or sale of certain lands in this County. No further action on this matter should be done by Congress until full hearings are held. The citizens are vitally interested.

For many years the idea for a great natural desert park adjacent to the city has been discussed. Much more than a park is involved now, which is the concern of the petitioners. We ask that the citizens, City, County, State, and United States, plan unselfishly for the best interests of all.

This land lies at the heart of the eastern path of the City's growth. Thus, the City and County must plan effectively for the long range best interests of the community.

All of the people concerned with this matter must be kept informed of progress, and be a part of the planning and decision making process.

The right to be heard on this matter is demanded.

Respectfully submitted,

Concerned Petitioners
Submitted: May 4, 1988

Original petitions
to Senator Domenici,
copies to others.

Committee note.--Petitions were retained in subcommittee files.